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No. 2905

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

CLALLAM LUMBER COMPANY, a Corporation,
Plaintiff,

Appellant

vs.

CLALLAM COUNTY, a Municipal Corporation, and
CLIFFORD L. BABCOCK, Treasurer, De-
fendants,

Appellees

RECORD ON APPEAL

(In Four Volumes)

Vol. 1—Pages 1 to 86

ON APPEAL FROM THE UNITED STATES DIS-
TRICT COURT FOR THE WESTERN
DISTRICT OF WASHINGTON, NORTHERN
DIVISION.

Filed

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F. D. Monckton,
Clerk.

NO.

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RECORD ON APPEAL

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ON APPEAL FROM THE UNITED STATES DIS-
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DISTRICT OF WASHINGTON, NORTHERN
DIVISION.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASH-
INGTON, NORTHERN DIVISION
IN EQUITY—NO. 36

CLALLAM LUMBER COMPANY, a corporation,
Plaintiff,

vs.

CLALLAM COUNTY a municipal corporation, and
Clifford L. Babcock, Treasurer,

Defendants.

NAMES AND ADDRESSES OF COUNSEL

WILLIAM A. PETERS, ESQ.,
Solicitor for Complainant,
546 New York Block, Seattle, Washington.

JOHN H. POWELL, ESQ.,
Solicitor for Complainant,
546 New York Block, Seattle, Washington.

DAN EARLE, ESQ.,
Solicitor for Complainant,
436 Burke Building, Seattle, Washington.

WILLIAM J. STEINERT, ESQ.,
Solicitor for Complainant,
436 Burke Building, Seattle, Washington.

CHARLES F. RIDDELL,
Solicitor for Defendants,
627 Colman Building, Seattle, Washington.

EDWIN C. EWING, ESQ.,
Solicitor for Defendants,
1116 Alaska Building, Seattle, Washington.

JOHN E. FROST, ESQ.,
Solicitor for Defendants,
Henry Building, Seattle, Washington.

SANFORD C. ROSE, ESQ.,
Solicitor for Defendants,
Port Angeles, Washington.

DEVILLO LEWIS, ESQ.,
Solicitor for Defendants,
Port Angeles, Washington.

RICHARD SAXE JONES, ESQ.,
Solicitor for Defendants,
627 Colman Building, Seattle, Washington.

Clallam Lumber Company
C. H. Ruddock and T. H. McCarthy

STATEMENT

Time of Commencement of Suit, May 29, 1914.

Names of Parties to suit: Clallam Lumber Company, Plaintiff and Appellant; Clallam County, a municipal corporation, and Clifford L. Babcock, Treasurer, Defendants and Appellees.

Date of filing respective pleadings:

Plaintiff's bill of complaint filed May 29, 1914.

Defendant's motion to dismiss plaintiff's bill of complaint filed June 18, 1914.

Memorandum decision denying motion to dismiss, filed October 26, 1914.

Order denying motion to dismiss, filed October 30, 1914.

Defendants' amended answer to amended complaint, filed January 18, 1915.

Stipulation of parties with reference to complaint, amended complaint, amended answer and second amended answer, filed November 6, 1916.

Depositions of William Garlick, R. W. Schumacher, J. P. Christensen, J. A. Adams and Charles F. Seal, taken under stipulation of parties, filed August 30, 1915.

On September 1, 1915, before the Hon. E. E. Cushman, Judge, this cause in conjunction with Equity Cause No. 37, entitled Charles H. Ruddock and Timothy H. McCarthy Plaintiffs vs. Clallam County, a municipal corporation and Clifford L. Babcock, Treasurer, defendants; Equity Cause No. 56, entitled Clallam Lumber Company, plaintiff vs. Clallam County, a municipal corporation and Herbert H. Wood, Treasurer, defendants, and Equity Cause No. 57, Charles H. Ruddock and Timothy H. McCarthy, plaintiffs vs. Clallam County, a municipal corporation and Herbert H. Wood, Treasurer, defendants, the same being consolidated for trial, were tried upon the testimony of witnesses produced before the court, and upon exhibits offered in evidence by the respective parties, which have been returned and filed herein, and upon the depositions

taken under stipulation of the parties and exhibits annexed thereto.

Counsel for the respective parties appeared and argued said causes in open court and thereafter submitted written briefs to said court.

Thereafter on January 22, 1916, the Judge before whom said causes were tried and heard made and filed his memorandum decision.

Decree was made and entered and filed in said cause on February 3, 1916.

Plaintiff made and filed petition for rehearing March 3, 1916.

Argument had on petition to rehear before Hon. E. E. Cushman, Judge, and taken under advisement by him April 18, 1916.

Memorandum decision on petition to rehear rendered and filed by Hon. E. E. Cushman, Judge, May 11, 1916.

Final order denying petition for rehearing made and filed May 15, 1916.

Journal entry of said court adjourning the November term and opening the May term of court, May 2, 1916.

Assignment of errors, petition for appeal, allowance of appeal, bond on appeal with approval thereof, filed October 27, 1916.

Citation on appeal issued, served and filed October 27, 1916.

Order of court, E. E. Cushman, Judge, enlarging time to docket case on appeal and return of citation made and entered November 2, 1916.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT OF
WASHINGTON, NORTHERN DIVISION.

CLALLAM LUMBER COMPANY, a corporation,
Plaintiff,

vs.

CLALLAM COUNTY, a municipal corporation, and
CLIFFORD L. BABCOCK, Treasurer,

BILL OF COMPLAINT.

TO THE JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION, sitting in equity:

Your orator, Clallam Lumber Company, brings this its bill of complaint against Clallam County, a municipal corporation, and Clifford L. Babcock, treasurer of said county, and humbly complaining, respectfully shows unto your honors as follows:

I.

Your orator is and for more than three years last past has been a corporation duly organized and existing under the laws of the State of Michigan, and having its principal office for the transaction of business at Grand Rapids, in said state, and authorized as a foreign corporation to do business in the state of Washington. It has filed and recorded in the office of the Secretary of State of Washington a certified copy of its articles of incorporation, duly certified by the Secretary of State of the State of Michigan, who is the custodian of the same according to the laws of Michigan, and your orator has constituted and appointed an agent in the State of Washington, as required by the laws of that State, who resides at Seattle, where the principal business of the corporation in Washington is to be carried on, which appointment has been duly filed for record in the office of the Secretary of State of the State of Washington, and your orator has since had and kept such resident agent in Washington duly empowered as required by the statutes of that State, and has, prior to the commencement of this suit, paid to the State of Washington its last annual license fee due to said State, and has in all respects complied with the laws of the State of Washington relative to the transaction of business by foreign corporations in that state. Your orator by its articles is duly authorized, among other things, to carry on a lumbering business and to own and hold timber lands. At all times herein mentioned said Clallam Lumber Company was, and it still is, a citizen of the

State of Michigan and a resident and inhabitant of the city of Grand Rapids, in that state.

II.

At all times herein mentioned the defendant County of Clallam was, and it still is, a County of the State of Washington, situate in the Northern Division of the Western District thereof, and as such a municipal corporation under the Constitution and laws of said state, and a citizen of the State of Washington.

III.

At all times herein mentioned the defendant Clifford L. Babcock was, and he still is, the duly elected, qualified and acting Treasurer of said County of Clallam, and a citizen of said State of Washington, and a resident and inhabitant of Clallam County, in the Northern Division of the Western District thereof.

IV.

The matter in controversy in this suit exceeds, exclusive of interest and costs, the sum or value of Three Thousand (\$3000) Dollars, and is, to wit, approximately the sum of twenty Thousand (\$20,000) Dollars.

V.

Your orator is the owner of certain timber lands situate in said Clallam County, a list of which, containing the correct description thereof, is hereto attached and marked Exhibit "A" and made a part hereof. Said lands contain, in the aggregate 41,372.8 acres of land, according to Government survey, be the same more or less. Your orator has been the owner of said lands for four years, or thereabouts, last past, save that a few descriptions, containing in the aggregate but a small acreage, were acquired within said period of four years, but with the exception of one parcel containing 120 acres, the same were acquired more than one year ago. The lands so owned by your orator do not constitute one solid body, but lie either in contiguous parcels or in parcels near to each other in various townships in the interior of Clallam County, along the valleys of the Solduc and Calawa Rivers, and the benches and ridges between said rivers or on

either side thereof, stretching from a short distance west of Crescent Lake upon the East in Township 30 North, Range 10 West, in a Westerly and Southerly direction toward the Pacific Ocean, the Westerly portions of said lands being situate near the Easterly edge of Townships 28 and 29 North, Range 14 West.

VI.

For the purpose of assessment for taxation and as a basis therefor, the assessing officers of Clallam County have from time to time, within the period of five or six years last past, caused timber lands in said county to be cruised and the cruises and estimates thus made to be adopted by the county. Most of the timber lands in the county owned by private parties, as distinguished from Government lands, have now been cruised, and all the lands owned by your orator have been so cruised, and so far as respects timber lands within the county upon which cruises have thus been made, it is claimed by the assessing officers that the same have been assessed upon the basis of the cruises thus obtained. The assessments made by the assessing officers of the County have been made, however, according to certain zones or districts which the assessing officers have arbitrarily, unreasonably and unlawfully laid off and determined without reference to and in disregard of the true or fair value in money of timber on the lands within such zones or districts respectively.

VII.

One of these zones thus arbitrarily laid off abuts immediately upon the Straits of Fuca and extends East and West along the Straits for a distance of approximately sixty-five miles, and extends back from the Straits into the interior distances varying approximately from three to eight miles. Within this zone are included those timber lands which, of all timber lands within the county, are of the greatest value, not merely because the timber thereon is of excellent quality, but particularly because of the location thereof, the same being situated immediately upon tide-water or adjacent thereto, and thus rendered immediately

accessible to the markets of the world. Within this zone the timber is valued for the year 1913, by the assessing officers of Clallam County, as follows: Fir, spruce and cedar at 80c per thousand feet; hemlock at 40c per thousand feet. In both this and the other zones, as your orator is informed and believes, larch (if any there is) is valued at the same price as hemlock; and in this and all other zones, in addition to the value placed by the assessing officers on the timber, there was for the year 1913, placed on the lands themselves a value of \$1. per acre, and the same, in the case of your orator's lands, was done arbitrarily, unreasonably and unlawfully and without any reference to the actual value thereof. Many of the lands owned by your orator are of no value whatsoever, independent of the timber standing or being thereon.

VIII.

Another zone thus arbitrarily, unreasonably and unlawfully set off by the assessing officers lies in the Western part of Clallam County. No part thereof lies nearer to the Straits than approximately four to six miles, and no lands within this zone owned by your orator lie nearer to the Straits than approximately nine miles and the great body of the lands owned by your orator within this zone lies more distant therefrom. Said zone or district is irregular in form and extends Southerly until it reaches the line of Jefferson County, a distance of approximately 30 miles from the Straits of Fuca. There are no harbors upon the Pacific Ocean within the County of Clallam or Jefferson at or through which the timber on the lands of your orator might or could be brought to market. Within the zone or district described in this paragraph there is a large acreage of land and upon the timber lands within this zone the assessing officers of Clallam County put for the year 1913, for the purposes of taxation, the following values, to wit: Upon fir, spruce and cedar timber a valuation of 70c per thousand feet, and upon hemlock timber a valuation of 35c per thousand feet. In this zone your orator owns lands approximately 18,707.84 acres in extent and the timber

upon the same, according to the cruise made by the County of Clallam, amounts, in the aggregate, to approximately 1,420,241½ M feet of all sorts, as more fully appears from schedule attached hereto marked Exhibit B and made a part hereof. The value of the lands of your orator within this zone, as fixed and determined by the assessing officers of Clallam County for the year 1913, for the purposes of taxation, is \$814,922.50. All the lands owned by your orator within this zone or the other zones or districts set off by said assessing officers are separated from the Straits of Fuca by a range of mountains.

IX.

Another zone thus arbitrarily, unreasonably and unlawfully set off by the assessing officers includes Lake Crescent and certain lands contiguous thereto, and a township, or thereabouts of lands lying West of Lake Crescent. Upon the timber lands within this zone or district the assessing officers of Clallam County put, for the year 1913, for the purposes of taxation, the following values, to wit: Upon the fir, spruce and cedar timber a valuation of 70c per thousand feet, and upon hemlock timber a valuation of 35c per thousand feet. In this zone your orator owns lands approximately 3207 acres in extent, and the timber upon the same, according to the cruise made by the County of Clallam amounts, in the aggregate to approximately 136,856¾ M feet of all sorts, as more fully appears from a schedule hereto attached as Exhibit C and made a part hereof. The value of the lands of your orator within this zone, as fixed and determined by the assessing officers of Clallam County for the year 1913 for purposes of taxation is \$88,730. None of the lands of your orator within this zone lie nearer to the Straits than six miles, and between these lands and the Straits there is a high and practically impassable mountain range occupying the North portion of Township 30 North, Range 10 West, which the Government has never surveyed.

X.

Another zone thus arbitrarily, unreasonably and

unlawfully set off by the assessing officers lies in the Southern Central part of said County, the North line thereof being approximately eight to fifteen miles from the Straits and the zone extending upon the South to the line of Jefferson County some twenty-seven miles distant from the Straits. Upon the timber lands within this zone or district the assessing officers of Clallam County put, for the year 1913, for the purposes of taxation, the following values, to-wit: Upon fir, spruce and cedar timber a valuation of 60c per thousand feet, and upon hemlock timber a valuation of 30c per thousand feet, and upon this zone or district your orator owns lands approximately 18,580.36 acres in extent and the timber upon the same, according to the cruise made by the County of Clallam, amounts in the aggregate to approximately 1,110,302 $\frac{1}{4}$ M feet of all sorts, as more fully appears from a schedule attached hereto marked Exhibit "D" and made a part hereof. The value of the lands of your orator within this zone, as fixed and determined by the assessing officers of Clallam County for the year 1913, for purposes of taxation is \$588,350.00. None of the lands of your orator within this zone lie nearer to the Straits than eight miles, and some of the lands owned by your orator in this zone are twenty-one miles distant from the Straits. The lands owned by your orator in this zone or district extend to the edge of the unsurveyed lands in the main Olympic Mountains.

XI.

Another zone thus arbitrarily, unreasonably and unlawfully set off by the assessing officers is situate north of the Solduc Valley and on the Westerly slope of the aforesaid range of mountains which separates said valley and all the lands of your orator from the Straits. This zone is composed in great part of rough and mountainous lands and there is comparatively a considerable quantity of burnt timber within the same. Upon the timber lands within this zone or district the assessing officers of Clallam County put for the year 1913, for the purposes of taxation, the following values, to-wit: Upon fir, spruce and cedar timber a valuation

of 40c per thousand feet, and upon hemlock timber a valuation of 20c per thousand feet. In this zone your orator owns lands approximately 798½ acres in extent and the timber upon the same, according to the cruise made by the County of Clallam, amounts in the aggregate, approximately to 64,738½ M feet of all sorts, as more fully appears from a schedule attached hereto, marked Exhibit "E" and made a part hereof. The value of the lands of your orator within this zone, as fixed and determined by the assessing officers of Clallam County for the year 1913, for the purposes of taxation, is \$21,745. None of the lands of your orator within this zone lie nearer to the Straits than eight miles.

XII.

Another zone thus arbitrarily, unreasonably and unlawfully set off by the assessing officers lies along the line of Jefferson County in that portion of Clallam County practically midway between the Easterly and Westerly ends thereof, and the same extends from the South line of Jefferson County North until it touches the North line of Township 29. This zone contains only a small acreage of lands owned by private parties, bordering upon the unsurveyed Government lands situate in the forest reserve. Upon the timber lands within this zone the assessing officers of Clallam County put, for the year 1913, for the purposes of taxation the following values, to-wit: Upon fir, spruce and cedar timber a valuation of 40c per thousand feet, and upon hemlock timber a valuation of 20c per thousand feet. In this zone your orator owns lands approximately eighty acres in extent and the timber upon the same, according to the cruise made by the County of Clallam amounts, in the aggregate, to approximately 4,052 M feet of all sorts, as more fully appears from a schedule attached hereto, marked Exhibit "F" and made a part hereof. The value of the lands of your orator within this zone, as fixed and determined by the assessing officers of Clallam County for the year 1913, for the purposes of taxation, is \$2,495. The lands of your orator within this zone lie approximately nine miles from the Straits. In addition to the assessed

valuations placed on the timber on the lands owned by your orator, as hereinbefore recited, the poles and ties shown by the cruise so made by the County of Clallam are likewise assessed against your orator upon the following basis, to-wit: Poles ten cents each and ties two cents each.

XIII.

It is and has been during all the times in this bill alleged, the custom practiced throughout the State of Washington by assessors and taxing boards to assess property at less than its actual and full value, the custom being in a large part of the counties of the state to assess said property at from 35 to 50 per cent of its true value, which custom has not only been pursued by the various county assessors but has been recognized and acquiesced in by the State Board of Equalization. The assessor of said County of Clallam gives out and pretends that for the year 1913 he assessed taxable property within said County of Clallam at and upon the basis of fifty-three per cent of the true and fair value thereof in money; and the members of the County Board of Equalization give out and pretend that they equalized and approved the assessments upon the taxable property within said county for such year at and upon the same basis. But your orator avers that such claims and pretenses are untrue in fact and that the interior timber lands in said county, and in particular the lands owned by your orator, were and are valued for the purposes of taxation in the year 1913 at sums greatly in excess of fifty-three per cent of the true and fair value thereof in money; that the other properties, real and personal, in said county were valued at sums much less than fifty-three per cent of the true and fair value thereof in money; and that your orator was grossly and intentionally discriminated against by the assessing officers of Clallam County in the matter of assessment and taxation upon its said lands for the year 1913.

XIV.

The timber upon the lands of your orator, as shown by the cruise thus made by the County of Clallam,

amount, in the aggregate, to approximately 1,420,-241½ M feet of all sorts, as more fully appears from a schedule attached hereto, marked Exhibit "G" and made a part hereof. The assessments upon the lands of your orator for the year 1913 were made upon the basis of said cruise, and your orator avers that the timber upon its lands was greatly overvalued by the assessing officers of Clallam County in the valuations put thereon by them for the purposes of taxation in the year 1913. The valuations thus placed by the assessing officers of Clallam County upon the lands of your orator, described in said Exhibit "—" hereto attached, for the purposes of taxation for the year 1913, amount in the aggregate to \$1,711,505. Your orator avers that the true and fair value in money of said lands does not exceed the sum of \$2,050,000 and did not exceed that sum in the year 1913, when said assessment was made by the assessing officers of Clallam County. Such assessment was therefore made upon the basis of approximately 83½ per cent of the true and fair value thereof in money. No property in said Clallam County, save the timber lands owned by your orator, and perhaps certain other timber lands situate like your orator's lands in the interior of said County, was assessed in said year 1913 at so great a proportion of the true and fair value thereof in money. Such assessment upon the lands of your orator at so large a percentage of the true and fair value thereof in money was not accidental or unintentional on the part of said assessing officers of Clallam County, but was intentional and wilful, and as your orator avers, was in pursuance of a concerted effort and corrupt and unlawful combination and conspiracy between the assessor of Clallam County and the other members of the County Board of Equalization of said County of Clallam. Some of the facts relating to the nature of said combination and conspiracy and to the unlawful assessment so made are hereinafter set forth.

XV.

The timber lands in the County of Clallam are

situate for the most part in the Westerly end thereof, the timbered portion of the county owned by private parties and subject to assessment being situate almost entirely within that portion of the county lying West of range eight and extending from thence practically to the Pacific Ocean. This territory is sparsely settled, containing only a few hundred inhabitants at the most and those settled for the greater part at Forks and Quillayute Prairies (so called). Comparatively few of the voters of the county, therefore, reside in the West end district. The county seat of the County is the city of Port Angeles in the middle district, said city containing a population of approximately 5000 in number. In the East district (so called) are prosperous farming communities, the same being well settled, particularly in the vicinity of Sequim and Dungeness, the population in said East district being approximately 1500 in number. The voting power of the County is, therefore, in the East and middle Commissioner's districts, and particularly in the Easterly portion of the county extending from and including Port Angeles to the East County line, the voters in the West district being so few that they have little voice in the County affairs. The lands in the West end of the county, being almost entirely timbered lands, except at the small prairies of Forks and Quillayute, are incapable at the present time of supporting any considerable population. These lands are mostly owned by non-residents of the County.

XVI.

The assessing officers of the County of Clallam (with the exception of one county commissioner from the West district) are elected by the votes of those resident in the middle and East district, because of the preponderance of votes in those districts, and for the purpose, as your orator avers, of ingratiating themselves with their constituents and serving their own individual and selfish ends, the said assessing officers of Clallam County have wrongfully, unlawfully and corruptly combined and concerted together with the intent and purpose to increase the assessments upon

the timber lands in the West end of the county beyond their proportion of the true and fair value of the property within the county and to lower and depreciate the assessments upon the property in the City of Port Angeles, and contiguous thereto, or in that vicinity, the farming lands in the East end of the county and other properties within the county, and especially in the middle and East districts thereof, and to assess the same upon a basis and at valuations far below their proportion of the true and fair value of the property subject to assessment in Clallam County. In pursuance of this combination and conspiracy it has been the custom of the assessor of the County of Clallam to consult and advise with the other members of the County Board of Equalization, or with all those resident in the middle and East districts, in making his assessment rolls, and that custom, as your orator is informed and believes, was followed by the assessor in making his assessment rolls for 1912 and 1913. The assessment roll, as prepared by the assessor, does not, therefore, and in each of the years above mentioned did not, represent the judgment of the assessor, but was and is the result of the combination and conspiracy with other members of said County Board of Equalization, and this roll, thus prepared by the assessing officer, is approved, as matter of course, in all substantial respects, and particularly as relates to assessments of timber lands, by the County Board of Equalization when it meets to review the same. As a result, no fair hearing, as contemplated by statute, is possible to be had on appeal to said Board. And your orator avers that this practice has been followed in said Clallam County for several years continuously past, and that, when your orator appealed to said Board in the year 1910, its attorney addressed said Board at the opening of its session and was told in substance by one of the members of said Board, speaking in its behalf, that it was needless to introduce any evidence of values of timber lands, for no such evidence would change the views of said Board.

XVII.

In the years 1912 and 1913 and prior thereto gross discriminations were practiced by the assessing officers of Clallam County against your orator and other owners of timber lands in the interior of the county and in favor of other owners of property subject to taxation in Clallam County. These discriminations were aimed in particular at your orator and other owners of interior timber for the reason that they own large bodies of lands in said county but control no votes and exercise no political influence therein, and the size of their holdings has constituted an inducement to said assessing officers to place a large and greatly disproportionate share of the taxes levied within the county upon your orator and such other owners of interior timber, and thereby relieve other property owners within the county of some portion of that burden of taxation which, under the Constitution and laws of Washington, equitably and lawfully falls upon them. These discriminations thus practiced against your orator have been and are with the intent and purpose to favor, at the expense of your orator and other owners of interior timber lands, all owners of property at Port Angeles and in the vicinity thereof, all owners of property in the East district (so called), all owners of personal property throughout the country, and likewise the owners of timber lands immediately upon the Straits.

XVIII.

Your orator has caused diligent and careful examination to be made of the assessment rolls of Clallam County for the years 1912 and 1913, and a like examination of property values within the county, and as a result thereof now finds that the lands and other properties situate at Port Angeles and subject to taxation are valued upon said assessment rolls as equalized for such years at not to exceed 10 to 20 per cent of their true and fair value in money. The County Board of Equalization of Clallam County is, and for the years 1912 and 1913 was, composed of five members of whom three are the county commissioners and the other two

are the County Treasurer and County Assessor respectively. Of said members of the Board one County Commissioner, representing the middle district, resides at Port Angeles and is Chairman of the Board. The County Treasurer and County Assessor also reside at Port Angeles. A fourth member resides in the East district, and the remaining member in the West district. Three out of the five members of the County Board of Equalization are, therefore, residents of Port Angeles and the major part of the population of the county is also found at Port Angeles. These members of the Board resident at Port Angeles are themselves owners of property at Port Angeles. In order to favor themselves and their constituents at Port Angeles aforesaid, the three members resident at Port Angeles have combined and conspired with the East end commissioner to put low valuations upon property at Port Angeles and vicinity and high and unequal valuations upon the timber lands situate in the West end of the county and in particular upon the timber lands of your orator and other owners of timber lands in the interior of Clallam County.

XIX.

As the result of diligent and careful examination made by your orator of the assessment rolls of Clallam County for the years 1912 and 1913, and a like examination of the property values within the county, your orator finds that the farming lands and other properties situate in the East end and subject to taxation are valued upon said tax rolls as equalized for such years at not to exceed 25% to 30% of their true and fair value in money.

XX.

As the result of diligent and careful examination made by your orator of the assessment rolls of Clallam County for the years 1912 and 1913, and a like examination of the property values within the county, your orator finds that personal property within said county, consisting of stocks and goods, wares and merchandise at Port Angeles and other personal properties situate at Port Angeles and elsewhere within

the county, are valued by the assessing officers of Clallam County for the year 1913 at not to exceed 10% to 15% of their true and fair value in money.

XXI.

The lands owned by your orator lie, as hereinbefore stated, in the valleys of the Solduc and Calawa rivers and upon the benches and ridges between the same or adjacent thereto. These lands are at present wholly destitute of facilities for transportation and it is impossible to bring the timber thereon into the market. In order to bring said timber to market it is necessary that facilities be provided for transportation to Grays Harbor on the South or to the Straits of Fuca on the North. Grays Harbor is far distant, no railroad from that direction extending farther North than Moclips, a distance of more than sixty miles from the lands of your orator. Few of the lands of your orator are less than twelve miles from the Straits and most of them lie a still greater distance therefrom, and all of the lands of your orator are cut off from the Straits by the range of mountains running East and West through the County of Clallam. It is, therefore, impossible to bring the timber from your orator's lands to market except by transporting the logs or lumber cut therefrom across this range of mountains. This cannot be accomplished except by the construction of a railroad at great expense. This expense is beyond any present means at the command of your orator and is likewise an expense which, in the present condition of the lumber market, or in any conditions of the lumber market which have at any time heretofore prevailed on the Pacific Coast, is prohibitive. This fact has a direct and important bearing on the present value of your orator's lands. Upon the Straits of Fuca, however, and immediately adjoining tidewater, there lie fine bodies of fir, spruce, cedar and hemlock timber, which can readily be logged to the Straits at the present time. Extensive logging operations have for many years been carried on and are now being carried on in this portion of Clallam County lying immediately upon the Straits. This Straits tim-

ber (so called) is in the zone or district arbitrarily, unreasonably and unlawfully laid off by the assessing officers as recited in paragraph VII, in which zone or district the timber is valued, for the year 1913, by the assessing officers of Clallam County, as follows: Fir, spruce and cedar at 80c per thousand feet, and hemlock at 40c per thousand feet; whereas upon the lands of your orator which lie within the interior of the County and separated from tide-water by a range of mountains, the timber is assessed at slightly lower figures, being for the most part 70c or 60c for fir, spruce and cedar, and 35c or 30c for hemlock. Your orator avers that the true and fair value in money of said timber so lying upon tide-water or adjacent thereto is at least twice the true and fair value in money of the timber on your orator's lands.

XXII.

The City of Port Angeles, where the majority of the voters of Clallam County reside, is situate at tide-water and upon a harbor which it is the wish of the inhabitants of said city may become the seat of a considerable commerce. To this end there is an ardent desire on the part of the inhabitants of Port Angeles that the timber owners of Clallam County build mills at Port Angeles, construct railroads into the interior of the County, transport logs from the interior of the County to Port Angeles, and saw the same into lumber at that city, thereby adding to the growth and development of Port Angeles as respects both industries and population. Various of the inhabitants of Port Angeles, including the assessor, have complained to your orator that, because it failed to build sawmills and railroads or cause the same to be done, it had pursued and was pursuing a policy hostile to the true interests of the county and especially of Port Angeles, and that such interests would be promoted only by building sawmills and railroads; and your orator avers that, as part of the combination and conspiracy aforesaid, it is the purpose of the assessing officers of Clallam County, representing as they believe, the sentiment existing among the voters at Port Angeles, to assess the timber

lands in the West end of Clallam County at exorbitant sums, as a means of compelling the erection of mills at Port Angeles, the construction of railroads into the interior of the county, and the commencement and carrying on of logging and lumbering operations within the county. In particular it has been and is a part of said combination and conspiracy to compel your orator, as one of the large timber land owners of Clallam County, to erect such mills and construct such railroad and commence and conduct lumbering operations; and through influential citizens of Port Angeles your orator has been assured that, if it would begin to operate its timber and employ a considerable number of men, it might rely that it would thenceforth be fairly and equitably treated as respects taxation. Your orator avers that the majority of the members of the Board of Equalization are themselves the owners of real property at Port Angeles and are, therefore, personally interested in its rapid growth and development, and desire, for their individual aggrandizement, to compel your orator to erect mills and construct railroads and commence and conduct lumbering operations, despite the fact that no such operations can be conducted with profit in the market conditions now prevailing.

XXIII.

Your orator avers that the unequal, discriminating and unlawful assessments which are herein complained of are not accidental or unintentional on the part of said assessing officers of Clallam County, but that the same are the direct and immediate result of a corrupt and unlawful intent on the part of the County Assessor for the County of Clallam, and the members of the County Board of Equalization of said County, or the majority of said members, to discriminate against the timber land owners in the West end of said County, and particularly against your orator in the matter of taxation, and in favor of all owners of property in the middle and East districts of the county, and unjustly and illegally to overvalue the property of your orator for purposes of taxation and to undervalue, for the

purposes of taxation, other lands and properties within said County of Clallam including all property situate in Port Angeles or the vicinity thereof, all farming properties in the East end of said County of Clallam, and all other properties, real or personal, in the middle and East districts, as well also as certain other timber lands in said county situate within the zone lying immediately upon the Straits, as set forth in paragraph VII of this bill.

XXIV.

Your orator avers that by Section 9,112 of Volume 3 of Remington & Ballinger's Annotated Codes and Statutes of Washington, it is provided that all property shall be assessed at not to exceed fifty per cent of its true and fair value in money; that the true and fair value in money of the lands owned by your orator and particularly described in Exhibit "A" hereto attached, with the timber standing thereon, does not exceed the sum of \$2,050,000, and did not exceed that sum when the assessments of 1912 and 1913 were made; that under said statute of the State of Washington any assessment of said lands for purposes of taxation at a sum greater than \$1,025,000 is unjust, illegal and void; that the true and fair value in money of the lands so owned by your orator is known to the assessor of said county of Clallam, as well as to the members of the County Board of Equalization thereof, and was so known at the time of the making of assessment and at the time of the approval thereof by said Board of Equalization; but that, wholly disregarding the duty thus placed upon them by the law to assess said lands at no greater sum than one-half their true and fair value in money, the said assessor and the said Board of Equalization fraudulently and unlawfully caused the same to be assessed at a sum exceeding by at least \$686,505, the 50% of the true and fair value in money of said lands, contrary to the provisions of the statute above specified, and that such overassessment was made and approved by said assessing officers with the fraudulent and corrupt intent of placing upon your orator the burden of an excessive

and unjust proportion of the taxes levied and collected within said County of Clallam for said year. The taxes levied for the year 1913 by the officers of Clallam County upon the lands owned by your orator, and described in Exhibit "A" amount, in the aggregate, to the sum of \$50,049.59 as shown by the tax roll of said county for that year, whereas had such taxes been levied upon the true and fair value in money of the aforesaid lands, the same would not have exceeded the sum of Thirty Thousand (\$30,000) Dollars; and your orator avers that by the fraudulent and unlawful practices of the assessing officers of Clallam County, of which complaint is herein made, there were and are unlawfully, unjustly and fraudulently imposed upon its lands described in Exhibit "A" taxes for the year 1913 to the amount of at least \$20,049.59, in excess of all taxes which might or could equitably or lawfully be imposed thereon.

XXV.

The overvaluation of the lands of your orator and other owners of interior lumber, and the undervaluation of other property in said county, of which complaint is herein made, are in pursuance of a definite, settled policy, design and plan systematically adopted by said assessing officers and practiced for several years last past. Your orator avers that the assessment of the lands of your orator and other owners of timber lands in the interior of Clallam County at sums which are proportionately much higher than the assessments imposed upon the other properties, real and personal, in said county, is and results in an actual fraud upon your orator, and the said plan so resulting in such fraud upon your orator was and is arbitrarily and systematically adopted and carried out by the assessor and members of the County Board of Equalization and by the defendants herein.

XXVI.

The assessments upon the lands of your orator were made by the Assessor of said County for the year 1912 at the high, excessive, unlawful and illegal rates herein specified, and upon the unlawful and

fraudulent basis herein mentioned. Thereafter the County Board of Equalization met ostensibly to consider and review the assessment roll. But such review was ostensible, specious and fraudulent in character, the members of the Board having already combined and conspired with said Assessor to make the assessments upon the basis and at the amounts hereinbefore mentioned. Your orator, through its managing officer and attorneys, appeared before the County Board of Equalization when the same was sitting at its regular session in 1912 and protested against said excessive, unjust and unlawful assessments upon its lands. Such protest was both oral and in writing. The protests so made by your orator, both oral and in writing, were arbitrarily disregarded and overruled by said Board, and the petition so filed by your orator to equalize its assessments and put the assessments on the property of your orator on the same basis as the assessments upon other property in said County, was arbitrarily denied.

XXVII.

The assessments upon the lands of your orator were made by the Assessor of said County for the year 1913, at the high, excessive, unlawful and illegal amounts and rates herein specified, and upon the unlawful and fraudulent basis herein mentioned. Thereafter the County Board of Equalization met ostensibly to consider and review the assessment roll, but such review was ostensible, specious and fraudulent in character, the members of the Board having already combined and conspired with said Assessor to make the assessments upon the basis and at the amounts hereinbefore mentioned. Your orator, through its attorney, appeared before the County Board of Equalization when the same was sitting at its regular session in 1913 and protested against said excessive, unjust and unlawful assessments upon its lands. The protests so made, both orally and in writing, were arbitrarily disregarded and overruled by said Board, and the petition of your orator to equalize its assessments and put the same on the same basis as the assessments

upon other properties in said county was arbitrarily and unlawfully denied.

XXVIII.

Thereafter the taxes were extended against the lands of your orator upon the tax rolls and books of said County, the same being so extended upon the basis of the high, excessive, unlawful and fraudulent assessments upon the lands of your orator, of which complaint is herein made. Said tax rolls and books were delivered to the defendant Clifford L. Babcock, Treasurer of said County, and said Clifford L. Babcock, as such Treasurer, has demanded payment of said illegal, fraudulent and arbitrary taxes assessed and levied in manner as hereinbefore specified. The taxes so demanded by said Clifford L. Babcock, Treasurer of said County, amount in the aggregate to the sum of \$50,049.59, and said Treasurer, unless restrained by the order of this Court will sell the property of your orator to satisfy the taxes thus fraudulently and unlawfully assessed and levied.

XXVIII A.

That prior to the assessment and levy of the taxes complained of herein this complainant under instruments of conveyance, conveying to it all of the lands hereinabove described, was in actual possession and occupation of a portion of said lands for the whole; otherwise said lands are vacant and unoccupied.

XXVIII B.

That it is the duty of the Treasurer of Clallam County under the law of the state, having received the moneys so taxed, to pay the sum so received in the proportions designated in his tax books to the various road and bridge funds, to the city of Port Angeles and to the State of Washington, and to various funds for which said taxes are collected and distributed under the law, and to other officers and authorities entitled to receive the same, and if the plaintiff instituted suit to recover back the tax so paid to the town of Port Angeles, or county, or road, or school districts, he would be obliged to bring a separate suit against each one of the taxing bodies receiving its propor-

tionate share of the taxes, thereby necessitating a multiplicity of suits, and the proportion of the tax which would go to the state of Washington could not be collected back by any legal proceeding whatever; and if repayment could be compelled from the town of Port Angeles and other taxing bodies, such repayment would not cover the costs, including commissions deducted for the collection of the tax, and penalties and complainant would be subject to great and irreparable injury for which there is not a complete, adequate or any remedy at law.

That the treasurer of Clallam County, upon the delinquency of said taxes, is required under the law to immediately issue delinquent certificates against said lands, under which the same are authorized to be sold and would be sold to pay said taxes, and the levy and existence of said taxes and threatened issuance of delinquent certificates and sale thereunder constitute a cloud upon plaintiff's title to said lands and all of them.

XXIX.

That upon the 27th day of May, 1914, your orator tendered and offered to pay to said Clifford L. Babcock, Treasurer of Clallam County, and to said Clallam County, the defendants herein, the full and true sum of Thirty Thousand (\$30,000) Dollars, lawful money of the United States, in payment of the taxes levied upon its lands in said County of Clallam for the year 1913; and your orator avers that the sum thus tendered is more than the taxes justly and equitably due from your orator to the defendants upon its lands aforesaid for such year, including all penalties, interest and costs, and more than the full amount which your orator would be required to pay if its property were assessed upon the same basis as all other property in Clallam County, or if said assessments were legal and equitable or equal and uniform with or compared to the assessments upon all other property within said county. Your orator herewith brings into court the sum of money in this paragraph specified and tenders and offers to pay, and does hereby pay the same, to and for the use and

benefit of the defendant County of Clallam, and your orator offers to pay and will pay any such other and further amounts as the court may find to be justly due from it or equitably owing by it to said Clallam County. And your orator avers that the taxes upon its said lands for all years prior to 1913 have been paid and that the taxes for the year 1913 have been paid and discharged by the tender and payment herein specified.

XXX.

Your orator avers that, by reason of the facts hereinbefore recited, the assessment of your orator's lands for taxation for the year 1913 is arbitrary, unjust, illegal and fraudulent as compared with the assessment of all other property in said Clallam County, and that such unlawful and fraudulent assessment is prohibited by the Constitution of the State of Washington, and that the assessment so made is, in particular, in violation of and contrary to Section 2, Article VII, of the Constitution of the State of Washington, in and by which it is provided that assessments and taxes shall be uniform and equal on all property in said State, according to its value in money, and that there shall be secured a just valuation for taxation of all property, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property; and that the assessment so made is also in violation of and contrary to Section 1 of Article VII of the Constitution of the State of Washington which declares that all property in the state not exempt under the laws of the United States, or under said State Constitution, shall be taxed in proportion to its value. And your orator avers that in truth and in fact the taxes upon its lands, described in Exhibit 'A', are not uniform and equal as compared with all other property in said County of Clallam.

XXXI.

Your orator avers that if the assessment and levy of taxes for the year 1913 upon its lands in Clallam County, hereinbefore described, be not set aside, vacated and held for naught, the same will result in the

taking of the property of your orator without due process of law, and in denying to your orator the equal protection of the laws, contrary to the provisions of the XIVth Amendment to the Constitution of the United States, which provides that no State shall deprive any person of property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. And your orator prays the protection afforded by said XIVth Amendment to the Constitution of the United States, and avers that this suit arises under the Constitution and Laws of the United States, and that for this reason, as well as because of the diverse citizenship of the parties, this Court has jurisdiction thereof.

XXXII.

Your orator therefore asks the aid of this Court in the premises and prays:

(a) That the County of Clallam, a municipal corporation, and Clifford L. Babcock, Treasurer of said County, answer this bill without oath, answer under oath of said defendants being hereby expressly waived.

(b) That this court decree that the assessments and taxes for the year 1913, imposed by the Assessing and Taxing Officers of the County of Clallam upon the lands of your orator, are unlawful, fraudulent and void; that the same are contrary to and in violation of the Constitution and Laws of the State of Washington and the provisions of the 14th Amendment to the Constitution of the United States.

(c) That this Court determine and decree what sums were or are justly and equitably owing by your orator for the taxes for the year 1913 upon its lands in Clallam County, described in Exhibit "A" hereto attached, and what assessments and taxes upon its lands are equal and uniform with or compared to the assessments and taxes upon all other property in said County.

(d) That it be determined and decreed that the sum of Thirty Thousand (\$30,000) Dollars, tendered by your orator to said defendants, is sufficient to pay all sums which were or are justly and equitably owing

by your orator for the taxes for the year 1913 upon its lands in said County of Clallam, described in said Exhibit "A".

(e) That said defendants, and each of them, be permanently enjoined and restrained from attempting to collect for the taxes of the year 1913 any sum or sums whatever in addition to those already tendered, and from selling or attempting to sell the lands or property of your orator, or any part thereof, to satisfy said taxes so levied for the year 1913 upon its lands in Clallam County, and that the cloud upon the title of your orator to its said lands which exists because or by reason of such unjust, illegal and fraudulent taxes, so levied, be forthwith removed and cancelled.

(f) That said defendants, and each of them, be in like manner enjoined until the further order of this Court.

(g) That such other or further order or decree be made in the premises as the nature of the case may require, and as to the Court shall seem meet.

XXXIII.

May it please your Honors to grant unto your orator the writ of injunction to be issued out of and under the seal of this Court in due form of law, permanently enjoining and restraining said defendants, County of Clallam and Clifford L. Babcock, Treasurer of said County, and each of them, from attempting to collect for the taxes of the year 1913 any sum or sums whatsoever in addition to those already tendered by your orator, and from selling or attempting to sell the lands or property of your orator, or any part thereof, to satisfy said taxes so levied for the year 1913 upon its lands in Clallam County; and that a writ of injunction be issued enjoining and restraining the defendants, and each of them, in like manner as herein prayed until the further order of this Court.

XXXIV.

May it please the Court, the premises being considered to grant unto your orator the writ of subpoena to be issued out of and under the seal of this Court, directed to said County of Clallam, a municipal cor-

poration, and Clifford L. Babcock, Treasurer of said County of Clallam, commanding them and each of them to appear before this Court at a date therein specified and answer this bill of complaint.

And your orator will ever pray, etc.

CLALLAM LUMBER COMPANY,

By Dan Earle.

PETERS & POWELL,
EARLE & STEINERT,

Attorneys for Complainant.

UNITED STATES OF AMERICA, STATE OF
WASHINGTON, COUNTY OF KING—SS.

On this 29th day of May, A. D. 1914, before me, a Notary Public in and for said County, personally appeared Dan Earle, to me known to be the same person who subscribed the foregoing bill of complaint in complainant's behalf, who made oath and says that he subscribed the name of complainant to the foregoing bill of complaint; that he is properly authorized so to do; that he is the attorney of said Clallam Lumber Company, a Michigan corporation; that no officer of said corporation is now within the State of Washington; that affiant has read the bill of complaint by him subscribed and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

VOLNEY P. EVERS,

Notary Public in and for the State of Washington,
residing at Seattle.

CLALLAM LUMBER CO.

EXHIBIT "A"

Tp.	Rg.	Sec.	Description.	Acres.
29	13	12	SE $\frac{1}{4}$ of SE $\frac{1}{4}$	40
28	13	17	NW $\frac{1}{4}$ of SW $\frac{1}{4}$	40
28	14	9	SE $\frac{1}{4}$ of SE $\frac{1}{4}$	40
"	"	12	NE $\frac{1}{4}$	160
"	"	"	S $\frac{1}{2}$ of NW $\frac{1}{4}$	80
"	"	13	SE $\frac{1}{4}$ of SE $\frac{1}{4}$	40

		14	Lot 4	34.50
			NE $\frac{1}{2}$ of SW $\frac{1}{4}$	80
			SW $\frac{1}{4}$ of SW $\frac{1}{4}$	40
		15	NW $\frac{1}{4}$ of SW $\frac{1}{4}$	40
		24	NE $\frac{1}{2}$ of NE $\frac{1}{4}$	80
29	14	1	Lot 1	40.19
			Lot 2	41.04
			Lot 3	41.99
			NE $\frac{1}{4}$ of SW $\frac{1}{4}$	40
28	13	2	Lot 4	38.71
		3	Lot 1	35.50
			Lot 4	39.82
			NW $\frac{1}{2}$ of W $\frac{1}{2}$ of SE $\frac{1}{4}$ of NW $\frac{1}{4}$	10
		4	Lot 4	29.25
			Lot 7	38.25
			NE $\frac{1}{4}$ of SW $\frac{1}{4}$	40
			SE $\frac{1}{4}$ of SW $\frac{1}{4}$	40
		7	Lot 8	28.50
			NW $\frac{1}{4}$ of NE $\frac{1}{4}$	40
			SW $\frac{1}{4}$ of NE $\frac{1}{4}$	40
			NE $\frac{1}{4}$ of NW $\frac{1}{4}$	40
			SE $\frac{1}{4}$ of NW $\frac{1}{4}$	40
			SE $\frac{1}{4}$	160
		8	S $\frac{1}{2}$ of NE $\frac{1}{4}$	80
			Lot 3	27
			" 4	37.75
			" 5	49.50
			NE $\frac{1}{2}$ of SW $\frac{1}{4}$	80
			SW $\frac{1}{4}$ of SW $\frac{1}{4}$	40
			SW $\frac{1}{4}$ of NW $\frac{1}{4}$	40
		9	Lot 1	40
		18	NE $\frac{1}{2}$ of NE $\frac{1}{4}$	80
			NW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
			NE $\frac{1}{4}$ of SW $\frac{1}{4}$	40
29	13	1	SE $\frac{1}{4}$	160
			S $\frac{1}{2}$ of SW $\frac{1}{4}$	80
			Lot 1	42.75
			" 2	18.65
			" 3	16.05
			" 4	37.02
			31-63/100 acres in Lot 5	31.63
			Lot 6	31.80

29	"	"	"	7	35.75
"	"	"	SE $\frac{1}{4}$ of SE $\frac{1}{4}$		40
"	"	"	Lot 1		41
"	"	"	"	2	24.30
"	"	"	"	3	33.40
"	"	"	"	4	37
"	"	"	"	7	7.80
"	"	"	"	8	24.20
"	"	"	"	10	9.75

			Forward, acres		2,643.10
Tp.	Rg.	Sec.	Description.		Acres.
			Forwarded		2643.10
29	13	2	Lot 11		38.15
"	"	"	"	12	31.60
"	"	"	"	13	39.55
"	"	"	"	15	38.25
"	"	3	SW $\frac{1}{4}$ of SE $\frac{1}{4}$		40
"	"	"	Lot 3, Except Right-of-way		42.85
"	"	"	"	4 " " " "	39.52
"	"	"	"	5 " " " "	18.94
"	"	"	"	6	27.80
"	"	"	"	7	16
"	"	"	"	8	22.15
"	"	"	"	9	7.30
"	"	"	"	10	38.05
"	"	"	"	11	16.50
"	"	"	"	13	39.70
"	"	"	"	14	37
"	"	4	NE $\frac{1}{4}$ of SE $\frac{1}{4}$, Except Right-of-way		39.56
"	"	"	NW $\frac{1}{4}$ of SE $\frac{1}{4}$		40
"	"	"	Lot 1		40.21
"	"	"	SE $\frac{1}{4}$ of SE $\frac{1}{4}$, Except Right-of-way		37.67
"	"	"	SW $\frac{1}{4}$ of SE $\frac{1}{4}$		40
"	"	6	Lot 2		38.49
"	"	"	"	3	35.68
"	"	"	"	4	46.43
"	"	"	NW $\frac{1}{4}$ of SE $\frac{1}{4}$		40
"	"	8	N $\frac{1}{2}$ of NE $\frac{1}{4}$		80

"	"	"	SW $\frac{1}{4}$ of NE $\frac{1}{4}$	40
"	"	"	NW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
"	"	9	Lot 1, Except Right-of-way	39.66
"	"	"	" 2 " " " "	20.15
"	"	"	" 3 " " " "	32.94
"	"	"	" 4 " " " "	29.80
"	"	"	" 5 " " " "	32.93
"	"	"	" 6	31.20
"	"	"	" 7	17.15
"	"	"	" 8	42.30
"	"	9	" 9	39.10
"	"	"	NW $\frac{1}{4}$ of NE $\frac{1}{4}$, Except Right-of-way	37.48
"	"	"	NE $\frac{1}{4}$ of NW $\frac{1}{4}$	40
"	"	"	NE $\frac{1}{4}$ of SE $\frac{1}{4}$	40
"	"	"	SE $\frac{1}{4}$ of SE $\frac{1}{4}$	40
"	"	"	W $\frac{1}{2}$ of SW $\frac{1}{4}$	80
"	"	10	NE $\frac{1}{4}$	160
"	"	"	Lot 1	33.40
"	"	"	" 2	6.25
"	"	"	" 3	31.20
"	"	"	" 4	39.80
"	"	"	NW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
"	"	"	SW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
"	"	"	NW $\frac{1}{4}$ of SW $\frac{1}{4}$	40
"	"	"	S $\frac{1}{2}$ of SW $\frac{1}{4}$	80
"	"	11	NE $\frac{1}{4}$	160
"	"	"	NW $\frac{1}{4}$ of NW $\frac{1}{4}$	40
"	"	"	SW $\frac{1}{4}$ of NW $\frac{1}{4}$	40
"	"	12	NE $\frac{1}{4}$	160
"	"	"	NW $\frac{1}{4}$	160
"	"	"	NE $\frac{1}{4}$ of SE $\frac{1}{4}$	40
"	"	13	NE $\frac{1}{4}$ of NE $\frac{1}{4}$	40
				<hr/>
			Forwarded, acres	5287.86
Tp.	Rg.	Sec.	Description.	Acres.
			Forwarded	5287.86
29	13	14	SW $\frac{1}{4}$ of SW $\frac{1}{4}$	40
"	"	15	NW $\frac{1}{4}$ of NE $\frac{1}{4}$	40
"	"	"	N $\frac{1}{2}$ of NW $\frac{1}{4}$	80
"	"	"	SE $\frac{1}{4}$	160

"	"	"	NE $\frac{1}{4}$ of SW $\frac{1}{4}$	40
"	"	"	SE $\frac{1}{4}$ of SW $\frac{1}{4}$	40
"	"	16	NE $\frac{1}{4}$ of NE $\frac{1}{4}$	40
"	"	"	SE $\frac{1}{4}$ of NE $\frac{1}{4}$	40
"	"	"	2-30/100 acres in SE $\frac{1}{4}$ of SE $\frac{1}{4}$	2.30
"	"	"	NW $\frac{1}{4}$ of SW $\frac{1}{4}$, Except Right-of-way	38.13
"	"	"	Lot 1, Except Right-of-way	36.85
"	"	"	" 7	34.20
"	"	"	" 8	29.50
"	"	17	NE $\frac{1}{4}$	160
"	"	"	NE $\frac{1}{4}$ of NW $\frac{1}{4}$	40
"	"	"	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	40
"	"	"	NW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
"	"	"	SW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
"	"	"	NE $\frac{1}{4}$ of SW $\frac{1}{4}$	40
"	"	"	SE $\frac{1}{4}$ of SW $\frac{1}{4}$	40
"	"	20	SW $\frac{1}{4}$ of NE $\frac{1}{4}$	40
"	"	"	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	40
"	"	"	N $\frac{1}{2}$ of SE $\frac{1}{4}$	80
"	"	21	Lot 1	39.75
"	"	"	" 2, Except 1-85/100 acres	27.60
"	"	"	" 3	34.05
"	"	"	" 7	7.25
"	"	"	" 10	15.30
"	"	22	N $\frac{1}{2}$ of NW $\frac{1}{4}$	80
"	"	"	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	40
"	"	"	Lot 1	29.15
"	"	"	" 4	38.60
"	"	26	SW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
"	"	27	NW $\frac{1}{4}$ of NW $\frac{1}{4}$	40
"	"	"	SW $\frac{1}{4}$ of NW $\frac{1}{4}$	40
"	"	"	SE $\frac{1}{4}$	160
"	"	28	Lot 7	37.15
"	"	"	" 8	34.55
"	"	"	" 9	25.95
"	"	"	" 10	31.45
"	"	"	" 11	7.15
"	"	"	NE $\frac{1}{4}$ of SE $\frac{1}{4}$	40
"	"	31	SE $\frac{1}{4}$ of NE $\frac{1}{4}$	40
"	"	"	Lot 1	45.57

"	"	"	"	2	45.53
"	"	"	"	3	11.30
"	"	"	"	8	30.50
"	"	32	SW $\frac{1}{4}$		160
"	"	33	NE $\frac{1}{4}$ of NE $\frac{1}{4}$		40
"	"	"	NE $\frac{1}{4}$ of NW $\frac{1}{4}$		40
"	"	"	Lot 1		30.50
"	"	"	SW $\frac{1}{4}$ of NW $\frac{1}{4}$		40
"	"	"	SW $\frac{1}{4}$		160
"	"	34	NE $\frac{1}{4}$ of NE $\frac{1}{4}$		40
"	"	"	SE $\frac{1}{4}$ of NE $\frac{1}{4}$		40
"	"	"	NW $\frac{1}{4}$ of NW $\frac{1}{4}$		40
"	"	"	S $\frac{1}{2}$ of NW $\frac{1}{4}$		80
"	"	35	NW $\frac{1}{4}$ of NE $\frac{1}{4}$		40
"	"	"	S $\frac{1}{2}$ of NE $\frac{1}{4}$		80
					<hr/>
			Forwarded		8200.19
Tp.	Rg.	Sec.	Description.		Acres.
			Forwarded		8200.19
29	13	35	S $\frac{1}{2}$ of NW $\frac{1}{4}$		80
30	13	10	N $\frac{1}{2}$ of SE $\frac{1}{4}$		80
"	"	20	NE $\frac{1}{4}$ of NE $\frac{1}{4}$		40
"	"	"	SE $\frac{1}{4}$ of NE $\frac{1}{4}$		40
"	"	"	NW $\frac{1}{4}$ of NW $\frac{1}{4}$		40
"	"	"	SW $\frac{1}{4}$ of NW $\frac{1}{4}$		40
"	"	"	SE $\frac{1}{4}$		160
"	"	"	NW $\frac{1}{4}$ of SW $\frac{1}{4}$		40
"	"	"	S $\frac{1}{2}$ of SW $\frac{1}{4}$		80
"	"	23	SE $\frac{1}{4}$		160
"	"	24	SE $\frac{1}{4}$ of SE $\frac{1}{4}$		40
"	"	25	NE $\frac{1}{4}$ of NE $\frac{1}{4}$		40
"	"	"	NW $\frac{1}{4}$ of SE $\frac{1}{4}$		40
"	"	"	SW $\frac{1}{4}$ of SE $\frac{1}{4}$		40
"	"	"	Lot 5		18.10
"	"	"	" 6		26.55
"	"	"	" 7		39.30
"	"	26	NW $\frac{1}{4}$		160
"	"	29	NW $\frac{1}{4}$ of NE $\frac{1}{4}$		40
"	"	"	SW $\frac{1}{4}$ of NE $\frac{1}{4}$		40
"	"	"	NW $\frac{1}{4}$		160
"	"	30	NE $\frac{1}{4}$		160

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		31	NE $\frac{1}{4}$ of NW $\frac{1}{4}$	40
			Lot 1	39.30
			" 2	39.50
			NW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
			NE $\frac{1}{4}$ of SW $\frac{1}{4}$	40
		31	Lot 3	39.70
			SE $\frac{1}{4}$ of SW $\frac{1}{4}$	40
			Lot 4	39.90
		33	NE $\frac{1}{4}$ of SE $\frac{1}{4}$	40
			SE $\frac{1}{4}$ of SE $\frac{1}{4}$	40
		34	NW $\frac{1}{4}$ of SW $\frac{1}{4}$	40
			SW $\frac{1}{4}$ of SW $\frac{1}{4}$	40
		35	Lot 3, Except Right-of-way	37.58
			" 5	11.20
			" 6	25.50
			NE $\frac{1}{4}$ of SE $\frac{1}{4}$, Except Right-of-way	38.10
			NW $\frac{1}{4}$ of SE $\frac{1}{4}$, " " " "	38.13
			S $\frac{1}{2}$ of SE $\frac{1}{4}$	80
			S $\frac{1}{2}$ of SW $\frac{1}{4}$	80
		36	Lot 1	30.45
			" 6	39.80
			" 7	14.50
			" 8	17.35
			" 10	16.25
			East 13 acres of Lot 11	13
			NW $\frac{1}{4}$ of SW $\frac{1}{4}$, Except Right-of-way	38.08
			SW $\frac{1}{4}$ of SW $\frac{1}{4}$	40
29	12	1	S $\frac{1}{2}$ of SE $\frac{1}{4}$	80
		2	S $\frac{1}{2}$ of SE $\frac{1}{4}$	80
			S $\frac{1}{2}$ of SW $\frac{1}{4}$	80
		3	S $\frac{1}{2}$ of SE $\frac{1}{4}$	80
			SE $\frac{1}{4}$ of SW $\frac{1}{4}$	40
		4	SW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
			NW $\frac{1}{4}$ of SW $\frac{1}{4}$	40
			S $\frac{1}{2}$ of SW $\frac{1}{4}$	80
			Lot 4	37.23
		5	All of	476.16
		6	N $\frac{1}{2}$ of SE $\frac{1}{4}$	80

“	“	“	SE $\frac{1}{4}$ of SE $\frac{1}{4}$	40
“	“	“	NE $\frac{1}{4}$ of SW $\frac{1}{4}$	40
“	“	“	SE $\frac{1}{4}$ of SW $\frac{1}{4}$	40
			Forwarded, acres	11,995.87
Tp.	Rg.	Sec.	Description.	Acres.
			Forwarded	11,995.87
29	12	6	Lot 1	40.89
“	“	“	“ 2	41.76
“	“	“	“ 3	40.64
“	“	“	“ 5	32.40
“	“	“	“ 6	34.60
“	“	“	“ 7	35.13
“	“	7	All of	623.60
“	“	8	N $\frac{1}{2}$ of	320
“	“	9	N $\frac{1}{2}$ of	320
“	“	10	NE $\frac{1}{4}$	160
“	“	“	NE $\frac{1}{4}$ of NW $\frac{1}{4}$	40
“	“	“	S $\frac{1}{2}$ of NW $\frac{1}{4}$	80
“	“	“	SE $\frac{1}{4}$	160
“	“	“	SW $\frac{1}{4}$	160
“	“	11	All of	640
“	“	12	All of	640
“	“	13	All of	640
“	“	14	All of	640
“	“	15	All of	640
“	“	20	SE $\frac{1}{4}$	160
“	“	21	NE $\frac{1}{4}$	160
“	“	“	N $\frac{1}{2}$ of SE $\frac{1}{4}$	80
“	“	“	SW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
“	“	“	SW $\frac{1}{4}$	160
“	“	22	All of	640
“	“	23	All of	640
“	“	24	NE $\frac{1}{4}$	160
“	“	“	NW $\frac{1}{4}$	160
“	“	“	NW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
“	“	“	SW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
“	“	“	SW $\frac{1}{4}$	160
“	“	25	NW $\frac{1}{4}$ of NE $\frac{1}{4}$	40
“	“	26	NW $\frac{1}{4}$	160
“	“	27	NE $\frac{1}{4}$	160

			N $\frac{1}{2}$ of NW $\frac{1}{4}$	80
			SW $\frac{1}{4}$ of NW $\frac{1}{4}$	40
			SE $\frac{1}{4}$	160
			SW $\frac{1}{4}$	160
		28	NE $\frac{1}{4}$	160
			NW $\frac{1}{4}$	160
			NE $\frac{1}{4}$ of SE $\frac{1}{4}$	40
			S $\frac{1}{2}$ of SW $\frac{1}{4}$	80
		29	NE $\frac{1}{4}$	160
			NW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
			SW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
29	11	18	All of	646.08
		19	S $\frac{1}{2}$ of NE $\frac{1}{4}$	80
		20	NE $\frac{1}{4}$	160
			S $\frac{1}{2}$ of NW $\frac{1}{4}$	80
		21	NW $\frac{1}{4}$	160
30	11	7	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	40
			SE $\frac{1}{4}$ of SE $\frac{1}{4}$	40
			NE $\frac{1}{4}$ of SW $\frac{1}{4}$	40
			Lot 3	29.40
			SE $\frac{1}{4}$ of SW $\frac{1}{4}$	40
		8	SE $\frac{1}{4}$ of SE $\frac{1}{4}$	40
		9	S $\frac{1}{2}$ of SW $\frac{1}{4}$	80
		16	N $\frac{1}{2}$ of NW $\frac{1}{4}$	80

			Forwarded, acres	22,720.37
Tp.	Rg.	Sec.	Description.	Acres.
			Forwarded	22,720.37
30	11	17	NE $\frac{1}{4}$ of NE $\frac{1}{4}$	40
			S $\frac{1}{2}$ of NE $\frac{1}{4}$	80
			SW $\frac{1}{4}$ of NW $\frac{1}{4}$	40
		18	NE $\frac{1}{4}$ of NE $\frac{1}{4}$	40
			SE $\frac{1}{4}$ of NE $\frac{1}{4}$	40
			SE $\frac{1}{4}$ of NW $\frac{1}{4}$	40
			NE $\frac{1}{4}$ of SW $\frac{1}{4}$	40
			Lot 3	24.82
			SE $\frac{1}{4}$ of SW $\frac{1}{4}$	40
			Lot 4	24.28
		25	SW $\frac{1}{4}$ of NE $\frac{1}{4}$	40
			NW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
			Lot 1	38

"	"	"	"	6	4.90
"	"	"	"	7	6.50
"	"	"	"	10	15.39
"	"	"	"	12	19.60
"	"	26	SW $\frac{1}{4}$ of NW $\frac{1}{4}$		40
"	"	"	S $\frac{1}{2}$ of SE $\frac{1}{4}$		80
"	"	"	SE $\frac{1}{4}$ of SW $\frac{1}{4}$		40
"	"	"	Lot 3		39.78
"	"	"	"	4	41.16
"	"	"	"	5	11.30
"	"	"	"	6	22
"	"	"	"	7	41.50
"	"	"	"	8	38
"	"	27	SW $\frac{1}{4}$		160
"	"	"	Lot 6		11
"	"	"	"	8	5.10
"	"	"	"	10	23.30
"	"	28	"	1	1.90
"	"	"	"	4	23.10
"	"	"	"	5	23.50
"	"	"	"	8	5.85
"	"	"	"	10	4.75
"	"	"	"	12	4.60
"	"	29	"	1	.10
"	"	30	SE $\frac{1}{4}$ of SW $\frac{1}{4}$		40
"	"	31	S $\frac{1}{2}$ of SE $\frac{1}{4}$		80
"	"	"	Lot 1		8.75
"	"	"	Lot 12, Except South 12 Acres		9.80
"	"	32	S $\frac{1}{2}$ of NE $\frac{1}{4}$		80
"	"	"	S $\frac{1}{2}$ of NW $\frac{1}{4}$		80
"	"	"	N $\frac{1}{2}$ of SE $\frac{1}{4}$		80
"	"	"	SW $\frac{1}{4}$ of SE $\frac{1}{4}$		40
"	"	"	SW $\frac{1}{4}$		160
"	"	"	Lot 1		25.20
"	"	"	"	6	21
"	"	"	"	7	11
"	"	"	"	8	12.20
"	"	33	NE $\frac{1}{4}$		160
"	"	"	NW $\frac{1}{4}$		160
"	"	"	NE $\frac{1}{4}$ of SE $\frac{1}{4}$		40
"	"	"	N $\frac{1}{2}$ of SW $\frac{1}{4}$		80

“	“	34	NW $\frac{1}{4}$ of NE $\frac{1}{4}$	40
“	“	“	NW $\frac{1}{4}$	160
“	“	“	S $\frac{1}{2}$ of SE $\frac{1}{4}$	80
“	“	“	SW $\frac{1}{4}$	160
“	“	35	N $\frac{1}{2}$ of NE $\frac{1}{4}$	80
“	“	“	SW $\frac{1}{4}$ of SW $\frac{1}{4}$	40
			Forwarded	25,558.75
TP.	Rg.	Sec.	Description.	Acres.
			Forwarded	25,558.75
29	10	3	N $\frac{1}{2}$ of NE $\frac{1}{4}$	80
30	10	24	S $\frac{1}{2}$ of SW $\frac{1}{4}$	80
“	“	25	NE $\frac{1}{4}$ of NE $\frac{1}{4}$	40
“	“	“	NW $\frac{1}{4}$ NE $\frac{1}{4}$, Except Right-of-way	39.48
“	“	“	SE $\frac{1}{4}$ NE $\frac{1}{4}$ “ “ “ “	38.96
“	“	“	SW $\frac{1}{4}$ NE $\frac{1}{4}$ “ “ “ “	39.48
“	“	“	NE $\frac{1}{4}$ NW $\frac{1}{4}$ “ “ “ “	38.83
“	“	“	NW $\frac{1}{4}$ NW $\frac{1}{4}$ “ “ “ “	39.05
30	12	27	Lot 3	4.75
“	“	28	NW $\frac{1}{4}$ of NE $\frac{1}{4}$	40
“	“	“	SW $\frac{1}{4}$ of NE $\frac{1}{4}$	40
“	“	“	NW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
“	“	“	Lot 1	3.50
“	“	“	“ 2	30.85
“	“	“	“ 3	38.50
“	“	“	“ 4	38.90
“	“	“	“ 6	8.40
“	“	29	NW $\frac{1}{4}$ NE $\frac{1}{4}$, Except part of Sappho and 17/100 acres	38.67
“	“	“	SW $\frac{1}{4}$ of NE $\frac{1}{4}$	40
“	“	“	NE $\frac{1}{4}$ of NW $\frac{1}{4}$, Except 6-45/100 acres	33.55
“	“	“	NW $\frac{1}{4}$ of NW $\frac{1}{4}$	40
“	“	“	S $\frac{1}{2}$ of NW $\frac{1}{4}$	80
“	“	“	NE $\frac{1}{4}$ of SE $\frac{1}{4}$	40
“	“	“	NW $\frac{1}{4}$ of SW $\frac{1}{4}$	40
“	“	“	Lot 1	31.80
“	“	“	“ 2	26
“	“	“	“ 3	17.90
“	“	“	“ 4	13.85
“	“	“	“ 5	38.90

"	"	"	"	6	8.20
"	"	"	"	7	4.25
"	"	"	"	8	30.18
"	"	"	"	9	29.60
"	"	"	"	10	5.75
"	"	30	NE $\frac{1}{4}$ of NE $\frac{1}{4}$	40	
"	"	"	S $\frac{1}{2}$ of NE $\frac{1}{4}$	80	
"	"	"	SW $\frac{1}{4}$ of SE $\frac{1}{4}$	40	
"	"	"	Lot 1	30.92	
"	"	"	"	7	7.50
"	"	"	"	8	21
"	"	"	"	10	32.20
"	"	"	"	11	11
"	"	"	"	12	25.50
"	"	"	"	13	7.45
"	"	"	"	14	20.75
"	"	31	NE $\frac{1}{4}$	160	
"	"	"	NE $\frac{1}{4}$ of NW $\frac{1}{4}$ or Lot 7	40	
"	"	"	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	40	
"	"	"	SE $\frac{1}{4}$	160	
"	"	"	NE $\frac{1}{4}$ of SW $\frac{1}{4}$	40	
"	"	"	SE $\frac{1}{4}$ of SW $\frac{1}{4}$	40	
"	"	"	Lot 2	21.30	
"	"	"	"	3	35.06
"	"	"	"	4	35.82
"	"	"	"	5	33.08
"	"	32	"	2	30.15
"	"	"	NW $\frac{1}{4}$ of NE $\frac{1}{4}$	40	
"	"	"	S $\frac{1}{2}$ of NE $\frac{1}{4}$	80	
"	"	"	NW $\frac{1}{4}$	160	
"	"	"	SE $\frac{1}{4}$	160	
"	"	"	SW $\frac{1}{4}$	160	

 28,269.83

Acres.

28,269.83

Tp.	Rg.	Sec.	Forwarded Description.	Forwarded	
30	12	33	S $\frac{1}{2}$ of NW $\frac{1}{4}$	80	
"	"	"	N $\frac{1}{2}$ of SW $\frac{1}{4}$	80	
"	"	"	Lot 1	28.15	
"	"	"	"	2	22.85
"	"	"	"	3	9.50

"	"	"	"	4	30.50
"	"	"	"	5	37.50
"	"	"	"	8	31.15
"	"	"	"	9	29.50
"	"	34	"	4	7.15
"	"	"	"	5	32.35
"	"	"	"	7	35.10
"	"	36	SE $\frac{1}{4}$	of SW $\frac{1}{4}$	40
"	"	"	Lot 6	"	10.76
"	"	"	"	7	36.79
"	"	"	"	9	38.10
"	"	"	"	11	20
29	11	3	"	1	29.32
"	"	"	"	2	29.59
"	"	"	"	3	29.36
"	"	"	"	4	29.13
"	"	5	"	3	29.32
"	"	"	"	3	29.42
"	"	"	"	4	29.50
"	"	"	"	5	40
"	"	"	"	6	40
"	"	"	"	7	40
"	"	"	"	8	40
"	"	6	"	1	29.75
"	"	7	NE $\frac{1}{4}$	of NE $\frac{1}{4}$	40
"	"	"	Lot 2	"	41.80
"	"	"	NE $\frac{1}{4}$	of SE $\frac{1}{4}$	40
"	"	"	SE $\frac{1}{4}$	of SE $\frac{1}{4}$	40
"	"	"	Lot 3	"	43.70
"	"	"	SE $\frac{1}{4}$	of SW $\frac{1}{4}$	40
"	"	"	Lot 4	"	41.59
"	"	"	NE $\frac{1}{4}$	"	160
"	"	"	NW $\frac{1}{4}$	of NW $\frac{1}{4}$	40
"	"	"	SE $\frac{1}{4}$	"	160
"	"	"	SW $\frac{1}{4}$	"	160
"	"	9	NW $\frac{1}{4}$	of NE $\frac{1}{4}$	40
"	"	"	SW $\frac{1}{4}$	of NE $\frac{1}{4}$	40
"	"	"	NE $\frac{1}{4}$	of NW $\frac{1}{4}$	40
"	"	"	SE $\frac{1}{4}$	of NW $\frac{1}{4}$	40
"	"	"	S $\frac{1}{2}$	of SE $\frac{1}{4}$	80
"	"	"	S $\frac{1}{2}$	of SW $\frac{1}{4}$	80

"	"	10	N $\frac{1}{2}$ of SE $\frac{1}{4}$	80
"	"	"	SE $\frac{1}{4}$ of SE $\frac{1}{4}$	40
"	"	"	NE $\frac{1}{4}$ of SW $\frac{1}{4}$	40
"	"	16	NW $\frac{1}{4}$ of NE $\frac{1}{4}$	40
"	"	"	N $\frac{1}{2}$ of NW $\frac{1}{4}$	80
"	"	"	SW $\frac{1}{4}$ of NW $\frac{1}{4}$	40
"	"	17	All of	640
29	12	32	SE $\frac{1}{4}$ of NE $\frac{1}{4}$	40
"	"	"	NW $\frac{1}{4}$ of NW $\frac{1}{4}$	40
"	"	"	SW $\frac{1}{4}$ of NW $\frac{1}{4}$	40
"	"	"	S $\frac{1}{2}$ of SE $\frac{1}{4}$	80
"	"	"	NW $\frac{1}{4}$ of SW $\frac{1}{4}$	40

				31,561.71
Twp.	Rg.	Sec.	Forwarded Description.	Acres.
				31,561.71
29	12	32	S $\frac{1}{2}$ of SW $\frac{1}{4}$	80
"	"	33	NE $\frac{1}{4}$	160
"	"	"	NW $\frac{1}{4}$	160
"	"	"	SE $\frac{1}{4}$	160
"	"	"	NE $\frac{1}{4}$ of SW $\frac{1}{4}$	40
"	"	"	S $\frac{1}{2}$ of SW $\frac{1}{4}$	80
"	"	34	NE $\frac{1}{4}$	160
"	"	"	NW $\frac{1}{4}$	160
"	"	"	N $\frac{1}{2}$ of SE $\frac{1}{4}$	80
"	"	"	SW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
"	"	"	SW $\frac{1}{4}$	160
30	12	1	SW $\frac{1}{4}$ of SW $\frac{1}{4}$	40
"	"	2	S $\frac{1}{2}$ of NE $\frac{1}{4}$	80
"	"	"	SW $\frac{1}{4}$ of NW $\frac{1}{4}$	40
"	"	"	S $\frac{1}{2}$ of SE $\frac{1}{4}$	80
"	"	"	N $\frac{1}{2}$ of SW $\frac{1}{4}$	80
"	"	3	S $\frac{1}{2}$ of NE $\frac{1}{4}$	80
"	"	"	N $\frac{1}{2}$ of SE $\frac{1}{4}$	80
"	"	"	SW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
"	"	9	S $\frac{1}{2}$ of NE $\frac{1}{4}$	80
"	"	"	S $\frac{1}{2}$ of NW $\frac{1}{4}$	80
"	"	"	N $\frac{1}{2}$ of SE $\frac{1}{4}$	80
"	"	"	SW $\frac{1}{4}$	160
"	"	10	S $\frac{1}{2}$ of NW $\frac{1}{4}$	80
"	"	"	SW $\frac{1}{4}$ of SE $\frac{1}{4}$	40

“	“	11	N $\frac{1}{2}$ of NE $\frac{1}{4}$	80
“	“	“	NW $\frac{1}{4}$	160
“	“	15	SW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
“	“	“	SW $\frac{1}{4}$	160
“	“	17	S $\frac{1}{2}$ of SE $\frac{1}{4}$	80
“	“	“	NW $\frac{1}{4}$ of SW $\frac{1}{4}$	40
“	“	“	S $\frac{1}{2}$ of SW $\frac{1}{4}$	80
“	“	18	SW $\frac{1}{4}$ of NE $\frac{1}{4}$	40
“	“	“	SE $\frac{1}{4}$	160
“	“	19	N $\frac{1}{2}$ of NE $\frac{1}{4}$	80
“	“	“	SW $\frac{1}{4}$ of NE $\frac{1}{4}$	40
“	“	“	NE $\frac{1}{4}$ of NW $\frac{1}{4}$	40
“	“	“	N $\frac{1}{2}$ of SE $\frac{1}{4}$	80
“	“	“	SE $\frac{1}{4}$ of SE $\frac{1}{4}$	40
“	“	“	Lot 4	30.57
“	“	20	NE $\frac{1}{4}$	160
“	“	“	N $\frac{1}{2}$ of NW $\frac{1}{4}$	80
“	“	“	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	40
“	“	“	North 30 acres of NE $\frac{1}{4}$ of SE $\frac{1}{4}$	30
“	“	“	NW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
“	“	“	SW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
“	“	“	N $\frac{1}{2}$ of SW $\frac{1}{4}$	80
“	“	“	N $\frac{1}{2}$ of SE $\frac{1}{4}$ of SW $\frac{1}{4}$	20
“	“	“	SW $\frac{1}{4}$ of SW $\frac{1}{4}$	40
“	“	21	NE $\frac{1}{4}$	160
“	“	“	NW $\frac{1}{4}$	160
“	“	“	SE $\frac{1}{4}$	160
“	“	“	N $\frac{1}{2}$ of SW $\frac{1}{4}$	80
“	“	“	SE $\frac{1}{4}$ of SW $\frac{1}{4}$	40
“	“	22	NE $\frac{1}{4}$	160
“	“	“	NW $\frac{1}{4}$	160
“	“	“	NE $\frac{1}{4}$ of SE $\frac{1}{4}$	40
“	“	“	SE $\frac{1}{4}$ of SE $\frac{1}{4}$	40
“	“	23	S $\frac{1}{2}$ of NE $\frac{1}{4}$	80
“	“	“	NW $\frac{1}{4}$ of NW $\frac{1}{4}$	40

			Forwarded	36,682.28
Twp.	Rg.	Sec.	Description.	Acres.
			Forwarded	36,682.28
30	12	23	SW $\frac{1}{4}$ of NW $\frac{1}{4}$	40
“	“	“	N $\frac{1}{2}$ of SE $\frac{1}{4}$	80

"	"	"	SE $\frac{1}{4}$ of SE $\frac{1}{4}$	40
"	"	"	NE $\frac{1}{4}$ of SW $\frac{1}{4}$	40
"	"	"	SE $\frac{1}{4}$ of SE $\frac{1}{4}$	40
"	"	24	NW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
"	"	"	SW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
"	"	"	SW $\frac{1}{4}$	160
"	"	25	NE $\frac{1}{4}$ of NE $\frac{1}{4}$	40
"	"	"	SE $\frac{1}{4}$ of NE $\frac{1}{4}$	40
"	"	"	NE $\frac{1}{4}$ of NW $\frac{1}{4}$	40
"	"	"	SW $\frac{1}{4}$	160
"	"	26	NE $\frac{1}{4}$ of SE $\frac{1}{4}$	40
"	"	"	SE $\frac{1}{4}$ of SE $\frac{1}{4}$	40
30	10	27	NE $\frac{1}{4}$ NE $\frac{1}{4}$, Except Right-of-way	39.03
"	"	"	NW $\frac{1}{4}$ NE $\frac{1}{4}$ " " " "	39.04
"	"	"	S $\frac{1}{2}$ of NE $\frac{1}{4}$	80
"	"	"	NE $\frac{1}{4}$ NW $\frac{1}{4}$, Except Right-of-way	39.03
30	10	27	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	40
"	"	"	SW $\frac{1}{4}$ NW $\frac{1}{4}$, Except Right-of-way	39.20
"	"	"	N $\frac{1}{2}$ of SE $\frac{1}{4}$	80
"	"	"	NW $\frac{1}{4}$ of SW $\frac{1}{4}$	40
"	"	"	S $\frac{1}{2}$ of SW $\frac{1}{4}$	80
"	"	28	NW $\frac{1}{4}$ of NE $\frac{1}{4}$	40
"	"	"	SE $\frac{1}{4}$ NE $\frac{1}{4}$, Except Right-of-way	39.07
"	"	"	SW $\frac{1}{4}$ NE $\frac{1}{4}$ " " " "	39.37
"	"	"	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	40
"	"	"	NE $\frac{1}{4}$ of SE $\frac{1}{4}$	40
"	"	"	SE $\frac{1}{4}$ SE $\frac{1}{4}$, Except Right-fo-way	38.83
"	"	"	Lot 5	2.15
"	"	"	" 6	7.50
"	"	"	" 7	21.70
"	"	30	SE $\frac{1}{4}$	160
"	"	"	Lot 7	52.50
"	"	"	" 8	50.43
"	"	31	NE $\frac{1}{4}$	160
"	"	"	SE $\frac{1}{4}$	160
"	"	"	Lot 1	50.45
"	"	"	" 2	50.54
"	"	"	" 3	50.63
"	"	32	NE $\frac{1}{4}$	160
"	"	"	NW $\frac{1}{4}$	160
"	"	"	SW $\frac{1}{4}$	160

"	"	33	NE $\frac{1}{4}$ NE $\frac{1}{4}$, Except Right-of-way	39.35
"	"	"	N $\frac{1}{2}$ of NW $\frac{1}{4}$	80
"	"	"	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	40
"	"	"	NW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
"	"	"	S $\frac{1}{2}$ of SE $\frac{1}{4}$	80
"	"	"	NE $\frac{1}{4}$ of SW $\frac{1}{4}$	40
"	"	"	Lot 1	22.60
"	"	"	" 2	11.20
"	"	"	" 3	26
"	"	"	" 4	12.50
"	"	"	" 5, Except Right-of-way	32.60
"	"	"	" 6	7.40
"	"	"	" 7	33.35
"	"	34	SW $\frac{1}{4}$ of NE $\frac{1}{4}$	40
"	"	"	NE $\frac{1}{4}$ of NW $\frac{1}{4}$	40
"	"	"	NW $\frac{1}{4}$ NW $\frac{1}{4}$, Except Right-of-way	39.62
"	"	"	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	40

Twp.	Rg.	Sec.	Description.	Acres.
			Forwarded	40,106.37
			Forwarded	40,106.37
30	10	34	SW $\frac{1}{4}$ NW $\frac{1}{4}$, Except Right-of-way	39.20
"	"	"	NW $\frac{1}{4}$ SE $\frac{1}{4}$ " " " "	39.23
"	"	"	SW $\frac{1}{4}$ of SW $\frac{1}{4}$	40
"	"	"	Lot 1, Except Right-of-way	35.89
"	"	"	" 2 " " " "	8.37
"	"	"	" 3	6.75
"	"	"	" 4 Except Right-of-way	34.57
"	"	"	" 6	13.40
"	"	"	" 7	26.80
"	"	"	" 8	25.90
"	"	"	" 9	37
28	14	2	Lot 4	40.80
"	"	23	SE $\frac{1}{4}$ of NE $\frac{1}{4}$	40
"	"	24	SW $\frac{1}{4}$ of NW $\frac{1}{4}$	40
29	11	6	Lot 6	40
"	"	"	" 7	40
"	"	"	" 8	40
"	"	7	NW $\frac{1}{4}$ of NE $\frac{1}{4}$	40
29	12	32	NW $\frac{1}{4}$ of NE $\frac{1}{4}$	40
"	"	"	SW $\frac{1}{4}$ of NE $\frac{1}{4}$	40

			SE $\frac{1}{4}$ of NW $\frac{1}{4}$	40
			NE $\frac{1}{4}$ of SW $\frac{1}{4}$	40
30	12	34	N $\frac{1}{2}$ of SW $\frac{1}{4}$	80
			Lot 1	4.60
			" 2	30.60
			" 9	8.25
			" 10	31.50
			" 11	21.70
			" 13	2.30
		27	SW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
30	11	25	SW $\frac{1}{4}$ of SW $\frac{1}{4}$	40
			Lot 4	30
			" 5	30.40
			" 11	39.17
29	12	28	NW $\frac{1}{4}$ of SE $\frac{1}{4}$	40
			S $\frac{1}{2}$ of SE $\frac{1}{4}$	80
30	12	19	NE $\frac{1}{4}$ of SW $\frac{1}{4}$	40

Forwarded 41,372.80

EXHIBIT "B"

FIR	992,207	M
SPRUCE	273,431	M
CEDAR	596	M
WHITE FIR	722	M
HEMLOCK	153,285 $\frac{1}{2}$	M

1,420,241 $\frac{1}{2}$ M

POLES

56,608

TIES

134,419

EXHIBIT "C"

FIR	76,780	M
Spruce	1,211	M
Cedar	518	M
White Fir	256 $\frac{1}{2}$	M
Hemlock	58,091 $\frac{1}{4}$	M

136,856 $\frac{3}{4}$ M

POLES

80,998

TIES

195,375

EXHIBIT "D"

FIR	607,104 $\frac{1}{4}$	M
Spruce	76,069 $\frac{1}{2}$	M
Cedar	12,570 $\frac{1}{2}$	M
White Fir	23,447 $\frac{3}{4}$	M
Hemlock	391,110 $\frac{1}{4}$	M

 1,110,302 $\frac{1}{4}$

POLES

202,516

TIES

295,460

EXHIBIT "E"

FIR	43,052	M
Spruce	3,082	M
Cedar	2,082	M
White Fir	325	M
Hemlock	16,197 $\frac{1}{2}$	M

 64,738 $\frac{1}{2}$ M

POLES

8,290

TIES

4,775

EXHIBIT "F"

FIR	2,802	M
Spruce	100	M
Cedar	121 $\frac{1}{2}$	M
Hemlock	1,028 $\frac{1}{2}$	M

 4,052 M

POLES

3,640

TIES

7,000

Indorsed: Bill of Complaint. Filed May 29, 1914.

No. 36

MOTION TO DISMISS PLAINTIFF'S BILL

Come now the defendants in the above entitled action, appearing by Sandford C. Rose, County Attorney for Clallam County, Washington, J. E. Frost, C. F. Riddell and Edwin C. Ewing, attorneys for the defendants, and respectfully move the court for an order dismissing the bill of complaint of plaintiff upon the grounds and for the reasons following:

I

Because the plaintiff at all times mentioned in its said bill of complaint has had a plain, speedy and adequate remedy under the statutes of the State of Washington.

II

Because it fully appears in plaintiff's bill of complaint that the matters and things therein alleged and complained of have long been acquiesced in and consented to by plaintiff, and plaintiff is in equity and good conscience denied from controverting their justice and legality.

III

Because the facts alleged in plaintiff's said bill of complaint are not in violation of any constitutional or statutory provision nor of any rule or principle of justice or equity, but to the contrary are in compliance with both law and equity.

IV

Because the matters and things alleged in plaintiff's said bill of complaint are not sufficient to entitle it to the relief prayed for or to any relief whatsoever or to be heard or to maintain an action.

SANDFORD C. ROSE.

J. E. FROST.

C. F. RIDDELL.

EDWIN C. EWING.

Indorsed: Motion to Dismiss. Filed June 18, 1914.

No. 36

MEMO DECISION

Peters & Powell
 Earle & Steinert
 For Plaintiff
 Charles F. Riddell
 J. K. Cochran
 J. E. Frost
 Edwin C. Ewing
 For Defendants.

NETERER, District Judge:

An order may be presented denying the motion to dismiss. By the allegations of the bill of complaint, actual fraud is charged between the assessing officers. The facts recited in the complaint are not mistakes of fact or errors of judgment on the part of the assessing and equalizing officers, but actual fraud is charged, and confederation and co-operation with relation to the excessive valuation and assessment of the lands of the complainant. By reason of the allegations and charges made in the bill of complaint, I think justice demands that the bill be answered, and whether relief should be afforded to the complainants will depend upon the evidence which is presented in support of the charges and complaints made.

JEREMIAH NETERER, Judge.

Indorsed: Memorandum Decision Denying Motion to Dismiss. Filed October 26, 1914.

In Equity No. 36

ORDER DENYING DEFENDANTS' MOTION TO
 DISMISS

This cause coming on to be heard upon the motion of the defendants Clallam County and Clifford L. Babcock, Treasurer of said County, to dismiss the bill of complaint of the plaintiff, and the matter having been argued by counsel and submitted to the court, said motion to dismiss is overruled and denied.

To which ruling of this court the defendants except and their exception is allowed.

Done in open court this 30th day of October, 1914.
Jeremiah Neterer, Judge.

Indorsed: Order Denying Motion to Dismiss.
Filed October 30, 1914.

No. 36

STIPULATION FOR PAYMENT AND RECEIPT
OF PLAINTIFF'S TENDER

IT IS STIPULATED between plaintiff and defendants herein as follows, to wit:

That the amount of money alleged by complainant to have been tendered in this cause and by it deposited with the Clerk of this court in furtherance of its tender may be paid over by the Clerk to the Treasurer of Clallam County and that such payment shall be received by the County Treasurer and operate as a credit to that extent upon the claim for taxes of the county against the complainant, with respect to the lands involved in this suit and that there shall be no penalty or interest charged or collected by the County or its Treasurer against this plaintiff or these lands, on account of the amount so paid in upon said taxes from and after the date of payment herein contemplated to the County Treasurer, whatever the event of this litigation.

With reference to any commissions to be deducted by the Clerk of this court on disbursing under this stipulation the moneys so paid, it is agreed that this feature shall follow the direction of the court in the final determination of this cause.

The payment to and receipt by the County Treasurer of this money shall not prejudice the position of plaintiff or defendants in this litigation, or operate to bar or foreclose the plaintiffs or defendants in their contentions herein, save pro tanto, as a credit to this amount to be given this day as payment on account of the taxes involved; but it shall operate as a waiver of any claim to penalty or interest on the part of the county, from this day forward, upon the amount of taxes covered by this payment.

IT IS STIPULATED that an order of court enforce-

ing this stipulation may be entered, upon application of either party hereto.

Dated this 4th day of November, 1914.

PETERS & POWELL,
EARLE & STEINERT,
Attorneys for Plaintiff.

J. E. COCHRAN,
J. E. FROST,
CHARLES F. RIDDELL,
EDWIN C. EWING,
Attorneys for Defendants.

Indorsed: Stipulation. Filed November 6, 1914.

No. 36

ORDER UPON STIPULATION TO RECEIPT
FOR PLAINTIFF'S TENDER

This matter coming on to be heard upon the Stipulation of the parties plaintiff and defendant herein filed on the 5th day of November, 1914, with respect to the payment to and acceptance by the defendants of the moneys paid into this court by complainant, and the same being submitted to this court, and being considered to the best interests of all parties that said payment be allowed and said county be permitted to accept same, upon the conditions set forth in the stipulation.

IT is hereby ordered that the Clerk of this court pay out said moneys to the defendant Treasurer of Clallam County in furtherance of said stipulation; the scope and effect of same and the rights of the parties to be as defined in said stipulation.

Done in open court this 6th day of November, 1914.

JEREMIAH NETERER, Judge.

Indorsed: Order. Filed November 6, 1914.

No. 1876

OFFICE OF COUNTY TREASURER
CLALLAM COUNTY, WASHINGTON
DUPLICATE

Port Angeles, Wash., Nov. 7/14.

Received of Frank L. Crosby, Clerk, \$29,400.00,

Twenty-nine thousand four hundred and no/100 dollars advance tax for Clallam Lumber Co.

C. L. BABCOCK,
Treasurer of Clallam County.

By D. J. Kelly, Deputy.

Indorsed: Receipt of County Treasurer. Filed November 9, 1914.

No. 36

DEFENDANTS' ANSWER TO AMENDED BILL
OF COMPLAINT
TO THE HONORABLE JUDGES OF THE
ABOVE ENTITLED COURT:

Come now Clallam County, a municipal corporation of the State of Washington, and Clifford L. Babcock, Treasurer of said Clallam County, the defendants named in the above entitled action, and for answer to the Amended Bill of Complaint of the Plaintiff herein, respectfully submit the following:

I

With reference to paragraph I, these defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, but they are willing to admit the same.

II

With reference to paragraph II, these defendants admit the allegations thereof.

III

With reference to paragraph III, these defendants admit that the defendant, Clifford L. Babcock, now is, and ever since the 9th day of January, 1911, has been, the duly elected, qualified and acting Treasurer of Clallam County, Washington, and a resident and inhabitant of said Clallam County.

IV

With reference to paragraph IV, these defendants admit the allegations thereof.

V

With reference to paragraph V, these defendants admit the allegations thereof.

VI

With reference to paragraph VI, these defendants admit that the timber lands of said county have been cruised and estimates of the quantities and quality of the different species of timber carefully made, and that such estimates were consulted and were a factor in determining the taxable values of timber lands in said county, and these defendants admit that the geographical location, availability, physical characteristics of the ground, and other elements influencing the market value of timber and timber lands, were carefully considered in making assessments referred to in said paragraph VI, and deny all the other allegations contained in said paragraph VI.

VII

With reference to paragraph VII, these defendants deny the allegations thereof.

VIII

With reference to paragraph VIII, these defendants admit that the assessing officers of said county for the year 1913 put upon the timber and the lands of the plaintiff the valuations therein set forth; admit that the plaintiffs are the owners of lands and timber to the extent and in the amounts of the figures therein set forth; and deny all the other allegations thereof.

IX

With reference to paragraph IX thereof, these defendants admit that the assessing officers of said county for the year 1913 put upon the timber and the lands of the plaintiff the valuations therein set forth; admit that the plaintiff is the owner of lands and timber to the extent and in the amounts of the figures therein stated; deny all the other allegations therein contained; and allege that all of said lands referred to in said paragraph are assessed for taxation at the same proportion of their market value as other similar timber lands in said county.

X

With reference to paragraph X thereof, these defendants admit that the assessing officers of said county for the year 1913 put upon the timber and lands of the

plaintiff the valuations therein set forth; admit that the plaintiff is the owner of the lands and the timber to the extent and in the amount of the figures therein stated; deny all the other allegations therein contained; and allege that all of said lands referred to in said paragraph are assessed for taxation at the same proportion of their market value as other similar timber lands in said county.

XI

With reference to paragraph XI thereof, these defendants admit that the assessing officers of said county for the year 1913 put upon the timber and lands of the plaintiff the valuations therein set forth; admit that the plaintiff is the owner of the lands and the timber to the extent and in the amounts of the figures therein set forth; deny all the other allegations therein contained; and allege that all of said lands referred to in said paragraph are assessed for taxation at the same proportion of their market value as other similar timbered lands in said county.

XII

With reference to paragraph XII thereof, these defendants admit that the assessing officers of said county for the year 1913 put upon the timber and lands of the plaintiff the valuations therein set forth; admit that the plaintiff is the owner of the lands and the timber to the extent and in the amount of the figures therein stated; deny all the other allegations therein contained; and allege that all of said lands referred to in said paragraph are assessed for taxation at the same proportion of their market value as other similar timber lands in said county.

XIII

With reference to paragraph XIII, these defendants admit the plaintiff's occupation and possession of lands as therein alleged; admit the duties of the Treasurer of Clallam County as therein alleged; and deny all the other allegations thereof.

XIV

With reference to paragraph XIV thereof, these defendants admit that the assessing officers of said

county for the year 1913 put upon the timber and lands of the plaintiff the valuations therein set forth; admit that the plaintiff is the owner of lands and timber to the extent and in the amounts of the figures therein stated; deny all the other allegations therein contained; and allege that all of said lands referred to in said paragraph are assessed for taxation at the same proportion of their market value as other similar timbered lands of said county.

XV

With reference to paragraph XV, these defendants admit the allegations thereof.

XVI

With reference to paragraph XVI, these defendants deny the allegations thereof.

XVII

With reference to paragraph XVII, these defendants deny the allegations thereof.

XVIII

With reference to paragraph XVIII, these defendants admit the composition of the County Board of Equalization of Clallam County and the residence of the constituent members thereof as alleged in said paragraph, and deny all the other allegations thereof.

XIX

With reference to paragraph XIX, these defendants deny the allegations thereof.

XX

With reference to paragraph XX, these defendants deny the allegations thereof.

XXI

With reference to paragraph XXI, these defendants admit the valuation of the timber upon the lands of the plaintiff for the year 1913 as therein set forth, and deny all the other allegations thereof.

XXII

With reference to paragraph XXII, these defendants deny the allegations thereof.

XXIII

With reference to paragraph XXIII, these defendants deny the allegations thereof.

XXIV

With reference to paragraph XXIV, these defendants admit the provisions of section 9112 of Remington & Ballinger's Code therein referred to, but allege that the Act of Legislature, of which said Section is a part was not the laws of the State of Washington at the time the assessment referred to in this action was made by the proper officers of said Clallam County; admit the assessment of taxes for the year 1913 at the amount therein set forth; and the knowledge imputed to the officers therein referred to; and deny all the other allegations thereof.

XXV

With reference to paragraph XXV, these defendants deny all the allegations thereof, and allege that the assessment of said lands and the valuations put thereon were and are the results of the honest and mature deliberation of the assessing officers of said county, formed upon full information, and after careful inquiry and investigation.

XXVI

With reference to paragraph XXVI, these defendants admit the appearance of the plaintiff before the County Board of Equalization as therein stated, and deny all the other allegations thereof.

XXVII

With reference to paragraph XXVII, these defendants admit the appearance of the plaintiff before the County Board of Equalization as therein stated, and deny all the other allegations thereof.

XXVIII

With reference to paragraph XXVIII, these defendants admit the extension of the taxes and the delivery of the tax rolls to the Treasurer of Clallam County, and that the amount of taxes demanded by Clifford L. Babcock as Treasurer of said Clallam County is in the sum therein stated; and deny all the other allegations thereof.

XXIX

With reference to paragraph XXIX, these defendants admit the tender of the amount therein stated,

and that the said Clifford L. Babcock, as Treasurer of said Clallam County, has refused to accept said tender as payment in full of the taxes upon the lands of the plaintiff for the year 1913, and admit the payment by the plaintiff of the taxes assessed against the lands of the plaintiffs for all years prior to 1913; and deny all the other allegations.

XXX

With reference to paragraph XXX, these defendants deny the allegations thereof.

XXXI

With reference to paragraph XXXI, these defendants admit the jurisdiction of this Court, but deny all of the other allegations thereof.

Wherefore, having fully answered the Amended Bill of Complaint herein, defendants pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained, and for such other and further relief as to the Court shall seem meet, just and equitable.

Clallam County.

Clifford L. Babcock, as Treasurer of said Clallam County.

By Edwin C. Ewing, Their Attorney.

J. E. Cochran.

J. E. Frost.

Charles F. Riddell.

Edwin C. Ewing.

Attorneys for Defendants.

Office and Postoffice Address: 627 Colman Building, Seattle, Washington.

Indorsed: Defendants' Answer to Amended Bill of Complaint. Filed November 20, 1914.

No. 36

PLAINTIFF'S MOTION TO STRIKE PORTIONS
OF DEFENDANTS' ANSWER AND TO
MAKE MORE DEFINITE AND
CERTAIN

Comes now the plaintiff and moves against the defendants' answer to the Amended Bill of Complaint as follows:

I

Referring to paragraph VI plaintiff moves the court to strike the same, because it is indefinite and is not a specific answer to the allegations of the bill referred to in said paragraph VI, and particularly the last eight lines thereof are objectionable, as being an attempted allegation of new matter by the defendants and none of said paragraph is specific denial or admission of the specific allegations of paragraph VI of the bill of complaint, to which it is addressed.

II

Referring to paragraphs VII, VIII, IX, X, XI, XII and XIV of the defendants' answer, plaintiff moves to strike the same and to require the defendants to answer explicitly, to either affirm or deny the specific charges made in the allegations of the plaintiff's bill to which the sections of defendants' answer above referred to, are addressed; and particularly to strike from paragraph XIV the last four lines thereof, for the reason that same is affirmative matter, improperly injected into the answer.

III

Referring to paragraph XVI, plaintiff moves the court that same be made specific, as to admissions or denials of the specific allegations of paragraph XVI of the plaintiff's bill.

IV

Referring to paragraphs XXI, XXII, and XXIV, this plaintiff moves to strike the same, and to require the defendants to answer more specifically the allegations of the bill.

V

Referring to paragraph XXV of said answer plaintiff moves to strike the same and to require the defendants to answer specifically the charges of the defendants' bill by either admitting or denying the same, and particularly to strike the last five lines of

said paragraph on the ground that same is an improper allegation of affirmative matter not plead by plaintiff.

EARLE & STEINERT.

PETERS & POWELL.

Attorneys for Plaintiff.

Indorsed: Motion to Strike. Filed November 30, 1914.

No. 36

ORDER ALLOWING PLAINTIFF'S MOTION TO
MAKE MORE DEFINITE AND CERTAIN

This matter having come on to be heard in the above entitled court upon the motion of the plaintiff to strike certain paragraphs of the defendants' answer, and to require the same to be made more definite and certain, plaintiff being present in court by its counsel Messrs. Peters & Powell, and the defendants being present in court by Mr. Edwin C. Ewing, their counsel.

The motion of plaintiff was allowed, and defendants allowed ten days to answer.

Done in open Court this 21st day of December, 1914.

JEREMIAH NETERER, Judge.

Indorsed: Order Allowing Plaintiff's Motion to Make More Definite and Certain. Filed Dec. 21, 1914.

No. 36

AMENDED ANSWER TO AMENDED BILL OF
COMPLAINT.

To the Honorable Judges of the above entitled Court:—

Come now Clallam County, a municipal corporation of the State of Washington, and Clifford L. Babcock, Treasurer of said Clallam County, the defendants named in the above entitled action, and by leave of court first had and obtained file this their amended answer to the amended bill of complaint of the plaintiff herein:—

I

With reference to paragraph I of said amended bill, the defendants allege that they are without knowl-

edge or information sufficient to form a belief as to the truth of the allegations therein contained, but they are willing to admit the same and not put the plaintiff to proof thereof.

II

With reference to paragraph II of said amended bill, the defendants admit the allegations thereof.

III

With reference to paragraph III of said amended bill, the defendants admit that the defendant, Clifford L. Babcock, now is, and ever since the 9th day of January, 1911, has been, the duly elected, qualified and acting Treasurer of Clallam County, Washington, and a resident and inhabitant of said Clallam County.

IV

With reference to paragraph IV of said amended bill, the defendants admit the allegations thereof.

V

With reference to paragraph V of said amended bill, the defendants admit the allegations thereof.

VI

With reference to paragraph VI of said amended bill, the defendants admit that for the purpose of assessment for taxation, and as a basis therefor, the assessing officers of Clallam County have from time to time within the period of five or six years last past caused timber lands in said county to be cruised and the cruises and estimates thus made to be adopted by the county; that most of the timber lands in the county owned by private parties as distinguished from Government lands have now been cruised, and that all the lands owned by the plaintiffs have been so cruised, and that so far as respects timber lands within the county upon which cruises have thus been made, it is claimed by the assessing officers that the same have been assessed upon the basis of the cruises thus obtained; admit that the assessments made by the assessing officers of the county have been made according to certain zones or districts which the assessing officers have laid off; but deny that said zones or districts have been laid off and determined arbitrarily, un-

reasonably or unlawfully, or without reference to and in disregard of the true and fair value in money of timber on the lands within such zones or districts, or in any other manner than fairly, truly, impartially, and as the result of the honest and mature deliberation and judgment of the assessing officers of said county, formed upon full information after careful inquiry and investigation.

VII

With reference to paragraph VII of said amended bill, the defendants deny that the zone therein referred to was arbitrarily laid off; admit the geographical location of said zone, but deny its dimensions and area as alleged in said paragraph; deny that within this zone are included those timber lands which, of all timber lands within the county, are of the greatest value; admit that within this zone the timber is valued for the year 1913 by the assessing officers of Clallam County at the figures set forth in said paragraph; admit that in this and all other zones, in addition to the value placed by the assessing officers on the timber, there was for the year 1913 placed upon the lands themselves a valuation of \$1 per acre; deny that the same, in the case of the plaintiff's lands or the lands of any other persons, was done arbitrarily, unreasonably and unlawfully and without any reference to the actual value thereof, or in any other manner than fairly, truly, impartially and according to law; and deny that many or any of the lands of the plaintiff are of no value whatsoever independent of the timber standing or being thereon.

VIII

With reference to paragraph VIII of said amended bill, the defendants deny that the zone therein referred to was arbitrarily, unreasonably and unlawfully set off by the assessing officers; admit that it lies in the Western part of Clallam County; deny that no part thereof lies nearer to the Straits than approximately four to six miles and that no lands within this zone owned by the plaintiff lie nearer to the Straits than approximately nine miles and that the great body of the lands owned

by the plaintiff within this zone lie much more distant therefrom; admit the form and extent of said zone as alleged in said paragraph; deny that there are no harbors upon the Pacific Ocean within the counties of Clallam or Jefferson at or through which the timber on the lands of the plaintiff might or could be brought to market; admit that within this zone there is a large acreage of land and that upon the timber lands within this zone the assessing officers of Clallam County put for the year 1913, for the purposes of taxation, the valuations therein set forth; admit that the plaintiff is the owner of lands and timber to the extent and in the amounts of the figures therein set forth, and that the value of the lands of the plaintiff within this zone, as fixed and determined by the assessing officers of Clallam County for the year 1913, for the purposes of taxation is as stated therein; deny that all the lands owned by the plaintiff within this zone or the other zones or districts set off by said assessing officers are separated from the Straits of Fuca by a range of mountains.

IX

With reference to paragraph IX of said amended bill, the defendants deny that the zone therein referred to was arbitrarily, unreasonably and unlawfully set off by the assessing officers; admit the location and extent of the zone as therein set forth; admit that upon the timber lands within this zone or district the assessing officers of Clallam County put, for the year 1913, for the purposes of taxation, the valuations therein set forth; admit that the plaintiff is the owner of lands and timber to the extent and in the quantities therein set forth, and that the value of the lands of the plaintiff as fixed and determined by the assessing officers of Clallam County for the year 1913 for the purposes of taxation is as stated therein; deny that none of the lands of the plaintiff within this zone lie nearer to the Straits than six miles, and deny that between these lands and the Straits there is a high and practically impassible mountain range as therein stated.

X

With reference to paragraph X of said amended bill, the defendants deny that the zone therein referred to was arbitrarily, unreasonably and unlawfully set off by the assessing officers; admit the location and extent of the zone as therein set forth; admit that upon the timber lands within this zone or district the assessing officers of Clallam County put, for the year 1913, for the purposes of taxation, the valuations therein set forth; admit that the plaintiff is the owner of lands and timber to the extent and in the quantities therein set forth, and that the value of the lands of the plaintiff as fixed and determined by the assessing officers of Clallam County for the year 1913 for the purposes of taxation is as stated therein; deny that none of the lands of the plaintiff within this zone lie nearer to the Straits than eight miles, and that some of the lands owned by the plaintiff in this zone are twenty-one miles distant therefrom, and admit the extent of the lands owned by the plaintiff as therein stated.

XI

With reference to paragraph XI of said amended bill, the defendants deny that the zone therein referred to was arbitrarily, unreasonably and unlawfully set off by the assessing officers; admit the geographical location of said zone; deny that a range of mountains separates the Sol Duc valley and the lands of the plaintiff from the Straits; deny that this zone is composed of rough and mountainous lands and that there is comparatively a considerable quantity of burnt timber within the same; admit that upon the timber lands within this zone or district the assessing officers of Clallam County put, for the year 1913, for the purposes of taxation, the valuations therein set forth; admit that the plaintiff is the owner of lands and timber to the extent and in the quantities therein set forth, and that the value of the lands of the plaintiff as fixed and determined by the assessing officers is as stated therein; deny that none of the lands of the plaintiff within this zone lie nearer to the Straits than eight miles.

XII

With reference to paragraph XII of said amended bill, the defendants deny that the zone therein referred to was arbitrarily, unreasonably or unlawfully set off by the assessing officers; admit the geographical location and extent of the zone therein referred to, and that said zone contains only a small acreage of land owned by private parties, bordering upon the unsurveyed Government lands situate in the forest reserve; admit that upon the timber lands within this zone or district the assessing officers of Clallam County put, for the year 1913, for the purposes of taxation, the valuations therein set forth; admit that the plaintiff is the owner of lands and timber to the extent and in the quantities therein set forth, and that the value of the lands of the plaintiff as fixed and determined by the assessing officers is as stated therein; deny that none of the lands of the plaintiff within this zone lie nearer to the Straits than nine miles.

XII-A

With reference to paragraph XII-A of said amended bill, the defendants admit the assessment of poles and ties upon the basis therein set forth.

XIII

With reference to paragraph XIII of said amended bill, the defendants deny the practice by assessors and taxing boards of the custom therein referred to, and deny the pursuit of such custom by county assessors and its recognition and acquiescence by the State Board of Equalization; deny that the assessor of Clallam County gives out and pretends that for the year 1913 he assessed taxable property within Clallam County upon the basis of fifty-three per cent of its true and fair value in money, or upon any other or different basis than that provided by the laws of the State of Washington at the time the assessments for the years 1912 and 1913 were made; deny that the members of the County Board of Equalization give out and pretend that they equalized and approved the assessments upon the taxable property within said county upon the basis alleged in said paragraph, or upon any other or

different basis than that provided by the laws of the State of Washington at the time the assessments for the years 1912 and 1913 were made; admit that the interior timber lands in said county, including the lands owned by the plaintiff were and are valued in the year 1913 for the purpose of taxation at sums in excess of fifty-three per cent of the true and fair value therein in money; deny that other properties in said county, real and personal, were valued at sums less than fifty-three per cent of the true and fair value thereof in money; deny that the plaintiff was discriminated against grossly and intentionally or at all, by the assessing officers of Clallam County in the matter of assessment and taxation of its lands for the year 1913.

XIV

With reference to paragraph XIV of said amended bill, the defendants admit that the timber upon the lands of the plaintiff, as shown by the cruise made by the County of Clallam, amount in the aggregate to the figures set forth therein, and that the assessments upon said lands for the year 1913 were made upon the basis of said cruise; deny that the timber upon the lands of the plaintiff was over-valued greatly or at all by the assessing officers of said county in the valuations put thereon by them for the purposes of taxation in the year 1913; admit that the valuations placed by the assessing officers of said county upon the lands of the plaintiff for the purpose of taxation for the year 1913 amount to the figures therein set forth; deny that the true and fair value in money of said lands does not exceed the sum of \$2,050,000, and did not exceed that sum in the year 1913; deny that said assessment for the year 1913 was made upon the basis of 83½ per cent, or upon any other or different basis than the true and fair value in money of all the property assessed; deny that no property in said Clallam County, save the timber lands owned by the plaintiff and certain other timber lands similarly situated was assessed in said year 1913 at so great a proportion of its true and fair value in money; deny that the assessment upon the

lands of the plaintiff, or upon any other lands or other property in said county, was in pursuance of any combination and conspiracy between the assessor of Clallam County and the other members of the County Board of Equalization of said county as alleged in said paragraph or at all.

XV

With reference to paragraph XV of said amended bill, the defendants admit the allegations thereof.

XVI

With reference to paragraph XVI of said amended bill, the defendants admit the election of the assessing officers of Clallam County as alleged in said paragraph; deny that the assessing officers of said county have combined and concerted together, wrongfully and corruptly, with the intents and purposes alleged, or for any other intent and purpose, or at all; admit that it has been the custom of the assessor of said county to consult and advise with the other members of the County Board of Equalization of said county, and with residents of the Middle and West and East Districts of said county in making his assessment rolls, and that such custom was followed in making his assessment rolls for the years 1912 and 1913, but deny that such custom is or was in pursuance of a combination and conspiracy as alleged in said paragraph or at all; deny that the assessment roll does not and did not in the years stated represent the judgment of the assessor and deny that said roll was and is the result of any combination and conspiracy with the other members of the County Board of Equalization; deny that the assessment roll is approved as a matter of course as relates to assessments on timber lands or otherwise by the County Board of Equalization; deny that no fair hearing is possible to be had on appeal to said Board; deny that the custom alleged in said paragraph or any similar or unlawful custom has been followed in said county for several years continuously past, or at all; and deny that the plaintiff was refused a hearing upon appeal to said Board in 1910, as alleged in said paragraph, or at all, or that the conversation between at-

torney for the plaintiff and the members of said Board took place at said time or at all.

XVII

With reference to paragraph XVII of said amended bill, the defendants deny that at the times therein stated or at any other times, for the reasons or with the intent and purposes therein alleged, or for any other purpose whatsoever, were gross or any discriminations practiced by the assessing officers of said Clallam County against the plaintiff or any other persons, or in favor of any other persons, as alleged in said paragraph, or at all.

XVIII

With reference to paragraph XVIII of said amended bill, the defendants allege that they are without knowledge or information as the examination of the assessment rolls of said county by the plaintiff, and the result thereof, and they therefore deny the allegations of said paragraph with regard thereto; deny that the lands and other properties situated at Port Angeles and subject to taxation are valued upon said assessment rolls as equalized for such years at not to exceed 10 to 20 per cent of their true and fair value in money; admit the composition of the County Board of Equalization of Clallam County and the residence of the constituent members thereof as therein alleged, and that the major portion of the population of said county is at Port Angeles; deny that for the purposes therein alleged, or for any other purpose, did the three members of said Board resident at Port Angeles, combine and conspire with the Commissioner from the East District, or any other person, against the plaintiff and other owners of timber lands in the interior of said county, as therein alleged, or against any other persons, or at all.

XIX

With reference to paragraph XIX of said amended bill, the defendants allege that they are without knowledge or information as to the examination by the plaintiff of the assessment rolls of Clallam County for the years 1912 and 1913 and of property values within

said county, and the results thereof, and they therefore deny the allegations of said paragraph with regard thereto; and deny that the farming lands and other properties situate in the East end and subject to taxation are valued upon said tax rolls as equalized for such years at not to exceed 25% to 30% of their true and fair value in money.

XX

With reference to paragraph XX of said amended bill, the defendants allege that they are without knowledge or information as to the examination by the plaintiff of the assessment rolls of Clallam County for the years 1912 and 1913 and of property values within said county, and the results thereof, and they therefore deny the allegations of said paragraph with regard thereto; and deny that the personal property within said county described in said paragraph was valued by the assessing officers of said county for the year 1913 at not to exceed 10% to 15% of their true and fair value in money.

XXI

With reference to paragraph XXI of said amended bill, the defendants admit the location of the lands of the plaintiff as therein stated; deny that said lands are wholly destitute of facilities for transportation, and that it is impossible to bring the timber therefrom into market or that it is necessary that facilities be provided for transportation to Gray's Harbor on the South or the Straits of Fuca on the North; admit that Gray's Harbor is far distant and that no railroad extends further North from that direction than Moclips, and that Moclips is sixty miles from the plaintiff's lands; deny that the lands of the plaintiff are as distant from the Straits of Fuca as therein stated or that said lands are cut off from the Straits by a range of mountains or that it is impossible to bring the timber from said lands except by transportation across such range of mountains; deny that such transportation is impossible of accomplishment except by the construction of a railroad at great expense, or that such expense is beyond the present means at the command of

the plaintiff or which is prohibitive under the present condition of the lumber market or conditions which have at any time heretofore prevailed, or that the facts alleged in said paragraph have a direct and important bearing upon the present value of the lands of the plaintiff; admit that upon the Straits of Fuca and immediately adjoining tide water, there lie fine bodies of fir, spruce, cedar and hemlock timber, which can readily be logged to the Straits as stated, and that extensive logging operations now are and for many years have been carried on in that portion of said Clallam County; admit that this Straits timber (so called) is in the zone or district described in paragraph VII of said amended bill, but deny that said zone was arbitrarily, unreasonably and unlawfully laid off by the assessing officers of said county; admit that in the zones described in said paragraphs VII and XXI the valuations put upon the timber are as stated in said paragraph XXI; and deny that the true and fair value in money of the so called Straits timber is at least twice the true and fair value in money of the timber on plaintiff's lands.

XXII

With reference to paragraph XXII of said amended bill, the defendants admit the geographical location of Port Angeles as therein stated, and the desires and ambitions of the inhabitants thereof; deny the statements therein imputed to inhabitants of Port Angeles and the assessor; deny the combination and conspiracy therein alleged or any combination and conspiracy; deny the purpose therein imputed to the assessing officers of said county, and the assurances of influential citizens of Port Angeles therein set forth; deny the ownership of real property in Port Angeles by the majority of the members of the Board of Equalization, and the personal interest and desire for agrandizement of the members of said Board for the purposes therein imputed or for any other purpose incompatible with their official positions and duties.

XXIII

With reference to paragraph XXIII of said

amended bill, the defendants deny that the assessments therein complained of are unequal, discriminating or unlawful, or that they are the result, direct and immediate or otherwise of any intent, either corrupt or unlawful or in any wise incompatible with the official positions and duties of said officers, of the County Assessor and the members of the County Board of Equalization of said Clallam County, to discriminate against the plaintiff or any other persons, or in favor of any persons, either as stated in said paragraph or otherwise, or to undervalue or over value the taxable properties in said county for the purposes therein alleged or for any other purposes whatsoever.

XXIV

With reference to paragraph XXIV of said amended bill, the defendants admit the provisions of §9112 of Volume 3 of Remington & Ballinger's Annotated Codes and Statutes of Washington therein referred to; deny that the true and fair value in money of the lands of the plaintiff therein referred to do not exceed, and did not exceed when the assessments for 1912 and 1913 were made, the sum therein stated; deny that under said statute any assessment of lands of the plaintiff for purposes of taxation at a sum greater than the sum of \$1,025,000 is unjust, illegal and void; admit that the true and fair value in money of the lands owned by the plaintiff is known to the assessor of Clallam County and to the members of the said County Board of Equalization, and was so known at the time of the making of said assessment and the approval thereof by said Board; deny that said officers in making and equalizing such assessment disregarded the duty placed upon them by law, and deny that said officers fraudulently and unlawfully caused said lands to be assessed at a sum exceeding by \$686,505 50% of the true and fair value in money of said lands; deny that the assessment of said lands was made and approved by said officers with a fraudulently or corrupt intent, or with any other intent incompatible with their official position and duties, either as stated in said paragraph or otherwise; admit that the taxes levied for the year 1913 upon the

lands of the plaintiff aggregate the sum therein stated, but deny that had said taxes been levied upon the true and fair value in money of said lands, the same would not have exceeded the sum of \$30,000; deny that the practices of the assessing officers of said county in the matter of the assessment of the lands of the plaintiff for the year 1913, or any other year, were fraudulent or unlawful, or in any wise incompatible with the duties of said officers, or that there are or were imposed upon the lands of the plaintiff for said year \$20,049.59 in excess of all taxes which might or could equitably or lawfully be imposed thereon.

XXV

With reference to paragraph XXV of said amended bill, the defendants deny either an over valuation of the lands therein referred to, or the undervaluation of other property in said county and the pursuit and practice of the policy therein imputed to the assessing officers of said county, or any other policy incompatible with their official duties, for several years last past, or at all; deny that the assessment of the lands of the plaintiff and other owners of timber lands in the interior of said county are proportionately higher than the assessments imposed upon other real and personal properties in said county, or that said assessments are or result in an actual or any fraud upon the plaintiff; deny that any plan resulting in fraud upon the plaintiff or any other person is or was arbitrarily and systematically or otherwise adopted and carried out by the officers therein referred to or by the defendants herein.

XXVI

With reference to paragraph XXVI of said amended bill, the defendants deny that the assessments upon the lands of the plaintiff were made by the assessor of said county for the year 1912 at a high, excessive, unlawful and illegal rate as specified in said amended bill, and upon the unlawful and fraudulent basis therein mentioned; admit that thereafter the County Board of Equalization met to consider and review the assessment roll; deny that such review was ostensible, specious and fraudulent in character; deny

that the members of said Board had combined and conspired with the assessor as therein stated, or at all; admit the appearance and protest of the plaintiff before said Board at its regular sitting in 1912 as therein stated; admit that the protests of the plaintiff were overruled by the Board, but deny that the same were arbitrarily disregarded or that the petition of the plaintiff to equalize its assessment was arbitrarily denied.

XXVII

With reference to paragraph XXVII of said amended bill, the defendants deny that the assessments upon the lands of the plaintiff were made by the assessor of said county for the year 1913 at a high, excessive, unlawful and illegal rate as specified in said amended bill, and upon the unlawful and fraudulent basis therein mentioned; admit that thereafter the County Board of Equalization met to consider and review the assessment roll; deny that such review was ostensible, specious and fraudulent in character; deny that the members of said Board of Equalization had combined and conspired with the assessor as therein stated, or at all; admit the appearance and protest of the plaintiff before said Board at its regular sitting in 1913 as therein stated; admit that the protests of the plaintiff were overruled by the Board, but deny that the same was arbitrarily disregarded or that the petition of the plaintiff to equalize its assessment was arbitrarily denied.

XXVIII

With reference to paragraph XXVIII of said amended bill, the defendants admit the extension of the taxes and the delivery of the tax rolls to the Treasurer of Clallam County, but deny that the basis of such extension and such assessment was high, excessive, unlawful and fraudulent as alleged therein; admit that said Treasurer has demanded payment of such taxes as shown by said rolls, but deny that said taxes are illegal, fraudulent or arbitrary; admit that the taxes so demanded by said Treasurer amount in the aggregate to said sum of \$50,049.99, and that said

Treasurer, unless restrained by order of this Court, will sell the property of the plaintiff to satisfy such taxes.

XXVIII-A

With reference to paragraph XXVIII-A of said amended bill, the defendants admit the allegations thereof.

XXVIII-B

With reference to paragraph XXVIII-B of said amended bill, the defendants admit the duties of the Treasurer of Clallam County with reference to the disposition of taxes collected as stated therein; deny that if the plaintiff instituted suit to recover back taxes paid as alleged in said paragraph, it would be obliged to bring suit against each one of the taxing bodies therein mentioned, and deny that thereby there would be necessitated a multiplicity of suits, and deny that the proportion of the tax going to the State of Washington could not be collected back, or that repayment from the town of Port Angeles would not cover costs and other items referred to therein, or that plaintiff would thereby be subjected to great and irreparable injury or that plaintiff would not have a complete, adequate or any remedy at law; admit the duties of the Treasurer of Clallam County with reference to the issuance of certificates of delinquency as therein alleged; and deny that the levy and existence of the tax therein referred to constitute a cloud upon the title to the plaintiff's lands or any of them.

XXIX

With reference to paragraph XXIX of said amended bill, the defendants admit the tender of the amount therein stated, and that the said Clifford L. Babcock, as Treasurer of said Clallam County, has refused to accept said tender as payment in full of the taxes upon the lands of the plaintiff for the year 1913; deny that the sum thus tendered is more than the taxes justly and equitably due from the plaintiff as therein alleged; deny that the plaintiffs property was assessed upon any different basis than all the other property within said county or that said assessments were other

than legal and equitable, equal to and uniform with the assessments upon all other property within said county; admit that the taxes upon the lands of the plaintiff for all years prior to 1913 have been paid and discharged; and deny that the taxes for the year 1913 have been paid and discharged by the tender and payment as specified in said paragraph.

XXX

With reference to paragraph XXX of said amended bill, the defendants deny that the assessment of the lands of the plaintiff for the year 1913 is arbitrary, unjust, illegal or fraudulent as compared with the assessment of all other property in said Clallam County, or otherwise, or that said assessment as made by the assessing officers of said county is prohibited by the Constitution of the State of Washington or is in violation of §1 and §2, Article VII thereof as therein alleged, or that the taxes upon the lands of the plaintiff are not equal and uniform as compared with all other property in said county.

XXXI

With reference to paragraph XXXI of said amended bill, the defendants deny that if the assessment and levy of taxes upon the plaintiff's lands for the year 1913 be not vacated, set aside and held for naught, the same will result in the taking of the property of the plaintiff without due process of law or in denying to the plaintiff the equal protection of the laws, or that the same would be a violation of the Fourteenth Amendment to the Constitution of the United States; but admit the jurisdiction of this Honorable Court.

XXXI-A

With reference to paragraph XXXI-A of said amended bill, the defendants deny that the plaintiff is remediless at common law or that he is relievable only in a court of equity as therein alleged.

FIRST AFFIRMATIVE DEFENSE.

And for a first further and affirmative defense to the cause of action set forth in the plaintiff's amended bill of complaint herein, the defendants allege:

I

That the true and fair value in money of timber and timbered lands is dependent, among other factors, upon the character and quality or grade of timber, the thickness of the stand of timber or quantity per acre or upon a given tract, the topography of the ground upon which the timber stands, the presence of water for use in camps, logging engines and locomotives, the probability of fires, the size and contiguity of the tracts of land, large tracts or contiguous tracts constituting practically solid bodies of land containing sufficiently large quantities of timber to constitute profitable logging enterprises being commercially more valuable per acre or per M feet of timber than smaller or isolated tracts not sufficient in size to warrant the construction of roads, railroads, camps and other facilities necessary to the removal of the timber.

The lands of the plaintiff, referred to in its amended bill of complaint herein, consist of large and practically solid bodies, bearing timber of valuable character, of exceptionally high grade and quality and of thick and heavy stand, and constitute desirable advantageous and profitable logging enterprises from an operating standpoint, making the same proportionately more valuable than smaller or isolated tracts of timbered lands in the same localities, or otherwise similar in character to the lands of the plaintiff.

II

That on or about the year 1908, the assessing officers of Clallam County caused to be employed experienced, capable and competent timber cruisers to make, and who did make, full, complete and detailed cruises and estimates of the character, quality and quantity of the timber standing upon the various legal sub divisions of land in said county. All of the timbered lands in said county in private ownership, including the lands of the plaintiff, have now been so cruised and platted into tracts or zones, and detailed reports and estimates of such cruises made and filed in the office of the County Assessor of said county respecting the same. These reports, estimates and

plats, taking into due consideration the factors of value hereinabove set forth, and also the availability, ease or difficulty of logging, and physical characteristics of the lands, together with such other information with reference to agricultural possibilities of the lands, the presence of mineral deposits and other similar factors of value as the assessing officers were able to obtain upon independent investigation, were, and have been consulted and used by such officers to assist in ascertaining and determining the values of said lands for the purposes of assessment and taxation, and such facts, plats, estimates, reports, data and other information, with due attention to geographical location, availability, physical characteristics of the ground, and other elements influencing the values of timber and timbered lands, as hereinabove set forth, were carefully considered by such officers in making the assessments referred to in the plaintiff's amended bill of complaint herein.

The assessments thus made, and as hereinafter referred to, were not arbitrary, capricious, unlawful, unreasonable, inequitable, disproportionate, or the result of any combination or conspiracy whatsoever, as alleged in the plaintiff's amended bill of complaint herein, or at all, but were the results of the honest, sincere, conscientious, mature and deliberate judgment and belief of the assessing and equalizing officers of said county formed upon and after full and careful investigation of all the facts and circumstances surrounding said lands and affecting their values, as hereinabove set forth, and a full free and fair hearing as required by law.

That by the laws of the State of Washington in force and effect at the time the assessments for the years 1912 and 1913 complained of in plaintiff's said amended bill of complaint were made, and prior thereto, as hereinafter set forth, it was and is provided:

(Laws of 1897, Chapter LXXI.)

§1. That all real and personal property now existing, or that shall be hereafter created or brought into this state shall be subject to assessment and taxa-

tion upon equalized valuations thereof, fixed with reference thereto on the first day of March at twelve o'clock meridian, in each and every year in which the same shall be listed, and

§2. That real property for the purposes of taxation, shall be construed to be the land itself, and all buildings, structures and improvements, or other fixtures of whatsoever kind thereon, and all rights and privileges thereto belonging or in any wise appertaining, and all quarries and fossils in and under the same, which the law defines, or the courts may interpret, declare and hold to be real property, for the purposes of taxation, and

§6. That all real property in this state subject to taxation shall be listed and assessed under the provisions of this act in the year 1900 and biennially thereafter on every even numbered year with reference to its value on the first day of March preceding the assessment, and that all real estate subject to taxation shall be listed by the assessor each year in the detailed and assessment list and in each odd numbered year the valuation of each tract for taxation shall be the same as the valuation thereof as equalized by the county board of equalization in the preceding year, and

§42. That all property shall be assessed at its true and fair value in money; that the assessor shall value each article or description of property by itself, and at such sum or price as he believes the same to be fairly worth in money at the time such assessment is made; that in assessing any tract or lot of real property, the value of the land, exclusive of improvements shall be determined; in valuing any property on which there is a coal or other mine, or stone or other quarry, the same shall be valued at such price as such property, including the mine or quarry, would sell at a fair voluntary sale for cash.

IV

That the assessment for the year 1913, complained of in the plaintiff's amended bill of complaint, was the assessed and equalized value of the plaintiff's lands for the year 1912, upon which the plaintiff paid all taxes

levied and assessed without protest; that the assessments of the lands of the plaintiff, described in its said amended bill of complaint, based upon the cruises of timbered lands in said county, as herein set forth, began and were made in the year 1910, and were used and consulted and adopted in 1911 and 1912, and have continued ever since; that the plaintiff, as alleged in its said amended bill of complaint herein, paid without protest, all of the taxes levied upon its said lands for the years 1910, 1911 and 1912.

V

That the methods and bases upon which, and the laws of the State of Washington under which, the assessments of timbered lands in Clallam County, including the lands of the plaintiff, have been made since the year 1910, have at all times since that date, been known to and acquiesced in by the plaintiff.

VI

That under the laws of the State of Washington, all taxes for State, County, Municipal and other purposes, are levied in specific sums and charged directly to the respective counties of said State; the rate per centum necessary to raise the taxes so levied in dollars and cents is computed and ascertained by the County Assessor of each county; that after taxes are thus levied, neither the county nor the property therein can be relieved of the duty of the payment of such taxes; that deficiencies owing to a reduction in the amount of taxes to be paid by any property owner or tax payer, or to a failure to collect taxes for any reason, are by the laws of said State, required to be added to, made up and collected under future assessments and levies, all of which is known to the plaintiff.

That the lands of the plaintiff, as admitted by the allegations of its amended bill of complaint herein, are not assessed or taxed at any greater or higher value or rate than other timbered lands in said county of similar character or similarly situated to the lands of the plaintiff, and upon which the taxes and assessments have been paid by the owners thereof.

That under the laws of the State of Washington,

county boards and officials are prohibited and are without authority to remit or grant refunds of taxes paid, all of which is known to the plaintiff herein; that plaintiff neglected and delayed to take proper or any steps or to bring any suit or other proceeding to correct the alleged inequitable assessments referred to in its said amended bill of complaint herein, until after the larger portion of the taxes levied upon other lands similar in character and similarly located to the lands of the plaintiff had been paid, and if relief as prayed for in the plaintiff's said amended bill of complaint is granted, other owners of property similar in character and similarly situated to the lands of the plaintiff in said county, will have been for the year 1913, and in the future will be, compelled to pay an unjust and unfair proportion of the taxes levied upon property in said county.

VII

That by reason of the premises, and the facts and circumstances hereinabove recited, the plaintiff has been and is guilty of laches, and is precluded and estopped to question or deny the legality, fairness or correctness of the assessment and levy of taxes upon its said lands for the year 1913, and it cannot, in equity or good conscience, now be heard to complain thereof.

SECOND AFFIRMATIVE DEFENSE.

And for a second and further affirmative defense to the cause of action set forth in the plaintiff's amended bill of complaint herein, the defendants allege:

I

That they hereby refer to paragraphs I, II, III and IV of their first and further affirmative defense hereinabove set forth, and by such reference adopt the same and make them a part of this second affirmative defense.

II

That Section 9112 of Volume 3 of Remington & Ballinger's Annotated Codes and Statutes of Washington was not, and did not become, the law of the State of Washington, until on and after the 12th day of June,

1913, subsequent to the time when the assessment of the lands of the plaintiff complained of in said amended bill of complaint was made, and therefore did not govern or apply to the said assessment of the plaintiff's lands.

WHEREFORE, having fully answered the said amended bill of complaint herein, the defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained and for such other and further relief as to the Court shall seem meet, just and equitable.

CLALLAM COUNTY,
CLIFFORD L. BABCOCK, as
Treasurer of said County.

Defendants.

By Edwin C. Ewing,
Their Attorney.

J. E. COCHRAN,
J. E. FROST,
C. F. RIDDELL,
EDWIN C. EWING,

Attorneys for Defendants.

Office and Post Office Address:

627 Colman Building,
Seattle, Washington.

Indorsed: Amended Answer to Amended Bill of Complaint. Filed January 18, 1915.

No. 36

STIPULATION AS TO PLEADINGS

IT IS STIPULATED by and between the plaintiff and the defendants herein, at the instance and request of the plaintiff, in order to save unnecessary expense of useless repetition in making up the record for appeal herein, as follows, to wit:

That there was served by the plaintiff upon the defendants and filed herein on the 9th day of December, 1914, an amended Bill of Complaint which was in all respects similar in words and figures to the original complaint, save in the following particulars:

A. In the original complaint, in paragraph X,

page 7, line 16, it is alleged by plaintiff that the timber upon the acreage in the zone therein referred to was, according to the cruise made by the County of Clallam, approximately 1,110,302 $\frac{1}{4}$ M feet of all sorts; whereas in the amended complaint, in paragraph X thereof, on page 7, line 15, this amount is alleged to be 1,112,994 M feet of timber.

B. In paragraph X of the original complaint, page 7, line 21, it is alleged that the timber lands of the plaintiff in the zone therein referred to, were assessed by Clallam County for taxation for the year 1913 in the sum of \$588,350. while in the amended complaint, in paragraph X thereof, page 7, line 19, this assessed valuation is charged as being placed by the county of Clallam at \$581,880.

C. In the original complaint in paragraph XI thereon, page 8, line 11, it was alleged by the plaintiff that the timber upon the zone therein referred to, according to the cruise made by the county of Clallam, amounts in the aggregate to approximately 64,738 $\frac{1}{2}$ M feet of all sorts; whereas in the amended complaint, in paragraph XI, page 8, line 10, the amount of timber upon this zone as shown by the cruise of Clallam County is alleged to be 64,739 $\frac{1}{2}$ M feet.

D. In the original complaint, in paragraph XIV, on page 10, line 17, it is alleged that the timber upon plaintiff's lands, as shown by the cruise of the county of Clallam, amounts in the aggregate to 1,420,241 $\frac{1}{2}$ M feet; whereas in the amended complaint, in paragraph XIV thereof, page 10, line 14, this timber is alleged to amount to the aggregate of 2,551,080 M feet.

E. The amended bill of complaint, at pages 23 and 24, contains additional paragraphs to those contained in the original bill, being designated as paragraphs XXVIII A and XXVIII B, reading as follows:

XXVIII A

"That prior to the assessment and levy of the taxes complained of herein this complainant under instruments of conveyance conveying to it all of the lands hereinabove described, was in the actual possession and

occupation in a portion of said lands for the whole; otherwise said lands are vacant and unoccupied.”

XXVIII B

“That it is the duty of the Treasurer of Clallam County under the law of the state, after receiving the moneys so taxed, to pay the sum so received in the proportions designated in his tax books to the various road and bridge funds and to the city of Port Angeles and to the state of Washington, and to the various funds for which said taxes are collected and distributed under the law, and to other officers and authorities entitled to receive the same, and if the plaintiff instituted suit to recover back the taxes so paid to the town of Port Angeles, or county, or road, or school districts it would be obliged to bring suit against each one of the taxing bodies receiving its proportionate share of the tax, thereby necessitating a multiplicity of suits, and the proportion of the tax which would go to the state of Washington could not be collected back by any legal proceeding whatever; and if repayment could be compelled from the town of Port Angeles and other taxing bodies, such repayment would not cover the costs, including commissions deducted for the collection of the tax, and penalties, and complainant would be subject to great and irreparable injury for which there was not a complete, adequate or any remedy at law.

That the Treasurer of Clallam County is required under the law, upon the delinquency of said taxes, to immediately issue delinquent certificates against said lands, under which same are authorized to be sold and would be sold to pay said taxes. The levy and existence of said tax and the threatened issuance of delinquent certificates and sale thereunder constitute a cloud upon the plaintiff's title to said lands and all of them.”

F. The amended bill of complaint contains, on page 26 thereof, a further and additional paragraph to those of the original bill, being designated as paragraph XXXI A, which reads as follows:

“That plaintiff is remediless at and by the strict

rules of the common law, and are relievable only in a court of equity, where matters of this sort are properly cognizable and relievable.”

IT IS FURTHER STIPULATED that in preparing the transcript and printing the record, these changes may be pointed out by interlineation, or by any other appropriate and convenient method.

IT IS FURTHER STIPULATED with reference to the pleadings in this cause that after the closing of the evidence and at the time of the argument of this cause, the defendants, over the objection of the plaintiff, under circumstances set forth in the statement of facts herein, were allowed to amend their answer in certain particulars, as defendants contended, to correspond with the evidence in the case, and thereafter, on to-wit the 3d day of Feby., 1916, the defendants served upon the plaintiff and filed herein their second amended answer with reference to which it is here and now stipulated that said second amended answer is the same in all respects as the amended answer filed herein on the 18th day of January, 1915, save only in the following particulars, to wit:

(A) Paragraph XIII was amended to read as follows:

“With reference to paragraph XIII of said amended bill the defendants admit the practice by assessors and taxing boards of the custom therein referred to, and admit the pursuit of such custom by county assessors and its recognition and acquiescence by the State Board of Equalization; deny that the assessor of Clallam County gives out and pretends that for the year 1913 he assessed taxable property within Clallam County upon the basis of fifty-three per cent of its true and fair value in money; deny that the members of the County Board of Equalization give out and pretend that they equalized and approved the assessments upon the taxable property within said county upon the basis alleged in said paragraph; deny that the interior timber lands in said county, including the lands owned by the plaintiff were and are valued in the year 1913 for the purpose of taxation at sums in excess of fifty-

three per cent of the true and fair value thereof in money, that other properties in said county, real and personal, were valued at sums less than fifty-three per cent of the true and fair value thereof in money; deny that the plaintiff was discriminated against grossly and intentionally or at all, by the assessing officers of Clallam County in the matter of assessment and taxation of its lands for the year 1913."

(B) Paragraph XIV was amended to read as follows:

"With reference to paragraph XIV of said amended bill, the defendants admit that the timber upon the lands of the plaintiff, as shown by the cruise made by the County of Clallam, amount in the aggregate to approximately 2,551,000,600 feet, the figures set forth therein, and that the assessments upon said lands for the year 1913 were made upon the basis of said cruise; deny that the timber upon the lands of the plaintiff was overvalued greatly or at all by the assessing officers of said county in the valuations put thereon by them for the purpose of taxation in the year 1913; admit that the valuation placed by the assessing officers of said county upon the lands of the plaintiff for the purpose of taxation for the year 1913 amount to the figures therein set forth, to wit: \$1,711,505; deny that the true and fair value in money of said lands does not exceed the sum of \$2,050,000 and did not exceed that sum in the year 1913; deny that said assessment for the year 1913 was made upon the basis of 83½ per cent, that no property in said Clallam County save the timber lands owned by the plaintiff and certain other timber lands similarly situated, was assessed in said year 1913 at so great a proportion of its true and fair value in money; deny that the assessment upon the lands of the plaintiff, or upon any other lands or other property in said county, was in pursuance of any combination and conspiracy between the assessor of Clallam County and the other members of the County Board of Equalization of said county as alleged in said paragraph or at all."

(C) Paragraph XVI was amended to read as follows:

“With reference to paragraph XVI of said amended bill the defendants admit the election of the assessing officers of Clallam County as alleged in said paragraph; deny that the assessing officers of said county have combined and concerted together, wrongfully and corruptly, with the intents and purposes alleged, or for any other intent and purpose, or at all; deny that it has been the custom of the assessor of said county to consult and advise with the other members of the County Board of Equalization of said county, and with residents of the Middle and West and East Districts of said county in making his assessment rolls, and that such custom was followed in making his assessment rolls for the year 1912 and 1913; deny that such custom is or was in pursuance of a combination and conspiracy as alleged in said paragraph or at all; deny that the assessment roll does not and did not in the years stated represent the judgment of the assessor; deny that said roll was and is the result of any combination and conspiracy with the other members of the County Board of Equalization; deny that the assessment roll is approved as a matter of course as relates to assessments on timber lands or otherwise by the County Board of Equalization; deny that no fair hearing is possible to be had on appeal to said Board; deny that the custom alleged in said paragraph or any other similar or unlawful custom has been followed in said county for several years continuously past, or at all; and deny that the plaintiff was refused a hearing upon appeal to said Board in 1910 as alleged in said paragraph, or at all, or that the conversation between attorney for the plaintiff and the members of said Board took place at said time or at all”

(D) Referring to paragraph XXI: In the original answer the defendants admitted the charge of the plaintiff's bill that “Upon the Straits of Fuca and immediately adjoining tidewater there lie fine bodies of fir, spruce, cedar and hemlock timber which can readily

be logged to the Straits", whereas in their amended answer they deny this allegation of plaintiff's.

(E) Paragraph XXIV was amended to read as follows:

"With reference to paragraph XXIV of said amended bill, the defendants admit the provisions of Sections 9112 of Volume 3 of Remington & Ballinger's Annotated Codes and Statutes of Washington therein referred to; deny that the true and fair value in money of the lands of the plaintiff therein referred to do not exceed, and did not exceed when the assessments for 1912 and 1913 were made, the sum of \$2,050,000.00 therein stated; deny that under said statute any assessment of lands of the plaintiff for purposes of taxation at a sum greater than the sum of \$1,025,000 is unjust, illegal and void; admit that the true and fair value in money of the lands owned by the plaintiff is known to the assessor of Clallam County and to the members of the said County Board of Equalization and was so known at the time of the making of said assessment and the approval thereof by said Board; deny that said officers in making and equalizing such assessment disregarded the duty placed upon them by law, and deny that said officers fraudulently and unlawfully caused said lands to be assessed at a sum exceeding by \$686,505. 50% of the true and fair value in money of said lands; deny that the assessment of said lands was made and approved by said officers with a fraudulent or corrupt intent, or with any other intent incompatible with their official positions and duties, either as stated in said paragraph or otherwise; admit that the taxes levied for the year 1913 upon the lands of the plaintiff aggregate the sum of \$50,049.59 therein stated, but deny that had said taxes been levied upon the true and fair value in money of said lands, the same would not have exceeded the sum of \$30,000; deny that the practice of the assessing officers of said county in the matter of the assessment of the lands of the plaintiff for the year 1913 were fraudulent or unlawful, or in any wise incompatible with the duties of said officers, or that there are or were imposed upon the

lands of the plaintiff for said year \$20,049.59 in excess of all taxes which might or could equitably or lawfully be imposed thereon."

And with this explanation, IT IS STIPULATED that plaintiff's amended bill and Defendants' second amended Answer need not be set out in this transcript on appeal.

EARL & STEINERT,
PETERS & POWELL,
Attorneys for Plaintiffs.
EDWIN C. EWING,
C. F. RIDDELL,
Attorneys for Defendants.

Indorsed: Stipulation. Filed November 6, 1916.

No. 2905

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

CLALLAM LUMBER COMPANY, a Corporation,
Plaintiff,

Appellant

vs.

CLALLAM COUNTY, a Municipal Corporation, and
CLIFFORD L. BABCOCK, Treasurer, De-
fendants,

Appellees

RECORD ON APPEAL

(In Four Volumes)

Vol. 2—Pages 87 to 436

ON APPEAL FROM THE UNITED STATES DIS-
TRICT COURT FOR THE WESTERN
DISTRICT OF WASHINGTON, NORTHERN
DIVISION.

SHERMAN PRINTING AND BINDING CO., SEATTLE, WASH.

Filed

JAN 2 - 1917

F. D. Monckton,
Clerk.

CAUSES 36-37, 56-57.

STATEMENT OF FACTS ON APPEAL.

BE IT REMEMBERED that on the 15th day of September, 1915, the above entitled causes came regularly on for trial in the above entitled court before the Honorable E. E. Cushman, Judge, sitting in Equity, the respective parties being represented as follows: Clallam Lumber Company, plaintiff in causes Nos. 36 and 56, and Charles H. Ruddock and Timothy H. McCarthy, plaintiffs in causes Nos. 37 and 57, being represented by Peters & Powell, and Earle & Steinert, and W. F. Keeney, of counsel, and the defendants, Clallam County, and Clifford L. Babcock and Herbert H. Wood, treasurers, being represented by John E. Frost, C. F. Riddell and Edwin C. Ewing, attorneys:

Thereupon it was agreed by all parties hereto that causes Nos. 36 and 37, 56 and 57, filed and pending in this court, should be consolidated for the purposes of trial, and same were thereupon presented and argued together, upon the same testimony and the same evidence, in accordance with the order of the court then made.

Thereupon the following testimony was introduced on behalf of the plaintiffs:

T. A. Rixon, produced as a witness on behalf of plaintiffs, testified as follows:

That he was a civil engineer, 52 years of age, living at Sappho, Clallam County, Washington, where he had lived some seven years on a previous occasion and recently for fourteen months. As forest expert for the United States government he was making a cruise for the Western forest reserves during the period from 1898 up to 1913 with a break of three years, a portion of which time he was in Alaska and during a portion of which he was working for the Oregon & Washington Railroad. For the government he had been making a general reconaissance, topographical maps, estimates of timber and establishing boundaries of the various reserves. In this connection he had cruised all of Clallam County roughly to establish the boundaries of the forest reserve. At the present time he is

employed by the plaintiffs, in looking after and cruising timber and attending to the fire patrol. He was chief engineer for the county of Clallam for the construction of their highways for a period of eighteen months.

In his engineering he had experience in reconnaissances for the projection of a railway from Grays Harbor to Lake Crescent and to Ozette Lake, the Lake being located in township 31 north range 15 west. The road came along the west side of the Lake and down to its southeast corner. It ran down Callawa Creek to the Dickey, and from the Dickey to the Sol Duc and the Bogachial, and then the Hoko, to the coast, following the coast down from the mouth of the Pysht. He made that reconnaissance in 1909 for the Oregon & Washington Railroad Company. No part of it has ever been built.

The witness was asked to give a description of the general physical contours on the land in question when the following took place:

MR. FROST: If your Honor pleases we desire to interpose another objection. I do not want to be technical, but these plaintiffs have pleaded a County cruise. They have estopped themselves there in any way denying or assailing the County cruise. They are bound by it; because they alleged affirmatively in their own pleadings that the County cruise shows the quantity and character of their timber.

THE COURT: You don't object to the County cruise?

MR. PETERS: No, your Honor.

Exhibit "A" was introduced by the plaintiffs and received as a map showing the location of the zones of timber and physical features of Western Clallam County. Referring to this map, Exhibit "A" the witness described Zone 1 as follows: From the east end of the county back to Twin Rivers there is a gradually sloping bench, sloping to the Straits for an approximate width of three miles. Back from the Straits this bench is elevated about 100 feet high on the shore line, and at six miles back from the shore, about 500 feet high. From Twin Rivers west there

is a broken country gradually sloping from the Straits with numerous deep ridges and canyons, these ridges and canyons running northeasterly. The elevation in this portion runs up, as high as 2000 feet.

South of the line in red, marking the south boundary of Zone 1 the country is mountainous. Referring to Zone —, lying immediately south of Zone 1, a portion of it is not very broken. It has a few hills in it, but is fairly level ground, but south of it are high mountains going all along. Where the broken line is shown on the map is the termination of the surveys, the land included in the blank space being too mountainous to survey. This land extends westerly to an elevation of about 2000 feet through to the Hoko River. There is a low pass at the Hoko and then the elevation climbs up to about 2000 feet just east of the Hoko and then the elevation runs in a southeasterly direction with the white in the blank space on the map, this being in Zone 2. That broken country extends over easterly to Lake Crescent and follows around to the south side of Lake Crescent to Lake Sutherland. This elevation from Lake Crescent to the Hoko runs from about 2500 to 4200 feet. It is very abrupt, especially from the south side. The north side sloping to the north is more gradual. The summit of this high elevation is about nine miles back from the Straits lying north of the plaintiffs' lands.

As to the character of the land to the south of this broken elevation along the Solduc River that comes up through the plaintiffs' timber, there is a valley varying from a mile to probably two miles wide, a level plateau, running at an elevation of about 250 feet at the lower end to 750 feet at the upper end, in a distance of some twenty miles.

Now going to the south of the Solduc River comes the Calawa River. That country is very broken up by mountains and ridges, the ridges running north and south approximately, the land running some 2500 feet high. There is a high mountainous ridge about 3000 feet between the valleys of the Solduc and Calawa

Rivers, following the main divide of the Solduc and Calawa up on the divide of the Hoko River, climbing up to a height of some 6000 feet eventually.

The lands in Zone 4 are considerably rougher ground than in Zone 2. Where the lands colored in yellow lie, that is the lands of Ruddock & McCarthy, is a level bench. West of these lands is a rolling country. To the west and northwest of the lands of the Clallam Lumber Company it is mountainous, the mountains heading off to the Hoko River. The height of the summit along the Sol Duc Valley and Lake Crescent is 1125 feet, according to railroad surveys. The witness being asked to point what course he would take for a railroad if one wished to get out of the country where these timber lands of the plaintiffs' lie, to transportation, and what elevations would have to be surmounted, he says that there is one road by way of the Dickey River over to the west; you would follow Dickey River up to Dickey Lake and across the divide, a low divide, and a channel only 250 feet high above the water, and follow down the Hoko River back to the Straits and out to Clallam Bay, that is, going west in the first place and then to the north and northeasterly. The length of that road would be about 50 miles. There is another route by way of Beaver Creek. Beaver Creek comes into the Solduc River in the southwest corner of Township 30 North, Range 12 West. I would follow that creek in a northeasterly direction crossing Burnt Mountain and then down to the Pysht. The highest elevation that would be encountered here would be 1000 feet. This would be a distance of some 25 miles.

Another route would be from the Solduc River to Bear Creek thence to the divide, thence down to Deep Creek, swinging around the mountains to Twin River and coming on to the grade at Port Angeles, about half way between the Lyre River and Twin River. This would be in the neighborhood of 60 miles and the highest summit that would have to be surmounted would be 1100 feet.

Another method of crossing would be to follow down the coast to Grays Harbor, a distance of some 75 miles to connect with the nearest railroad. The highest elevation that would be encountered by this route would be some 300 feet.

The witness stated his qualifications as follows: That he was not a graduate engineer; that his professional education as a civil engineer consisted of an apprenticeship from the time he was sixteen to nineteen years of age, and he further testified as follows:

Q. Now, what would be generally the cost of construction of a railroad out that way towards the Milwaukee?

MR. FROST: We object to that for the reason the witness is not yet qualified as a railroad construction expert.

THE COURT: Objection sustained. Exception allowed.

Q. (Mr. Peters) Have you had any experience with estimating the cost of construction railroads?

A. Yes, sir.

Q. For instance, in your experience with the Oregon & Washington, was it, you said?

A. Yes, sir.

Q. Did you have to take into consideration the gradients and the cost of road-beds, and the cost of construction in determining that road and reporting upon it?

A. Yes, sir.

Q. Have you had experience in the method of determining the cost of a road through a new country?

A. Yes, sir.

MR. PETERS: We submit he is qualified.

MR. FROST: The witness has not shown that he constructed a railroad, that he has had charge of the construction of a railroad.

THE COURT: That goes to the weight of his evidence and not to its admissibility.

Q. (Mr. Peters) Have you ever constructed a railroad?

A. Yes, sir.

Q. Assisted in it?

A. Yes, sir.

Q. What road?

A. The Duluth, Southshore & Atlantic.

Q. How much construction work was there?

A. I had twenty-four miles of construction.

Q. How long was that?

A. About a year all told.

Q. Standard gage road?

A. Yes, sir.

Q. Any other work of that nature?

A. I was the chief engineer on the Tanana Mines Railroad in Alaska. Although we did not build in there we made an estimate for the contractors to build on.

Q. Build by contract, you made an estimate?

A. Yes, sir.

Q. Afterwards checked up the estimate and passed on the work?

A. Yes.

The nearest railroad to these lands of the plaintiffs now existing is the Milwaukee, a little west of the Lyre River. As to the cost of a railroad to connect with the Milwaukee road and to run into these lands, the witness made the following estimate:

Taking the Solduc line to Lake Crescent, from the center of this timber up to Lake Crescent, would be fairly easy construction. That could be built including the bridging across the Soldue River for possibly \$5000 per miles; from two miles west of the lake to Piedmont would cost some \$25,000 a mile, these estimates covering only grading without the steel laid or ties. The steel would run up to \$30,000 per mile. On the narrows along the side of the lake would be some heavy tunneling amounting to about a mile in all; from Piedmont in to Port Angeles would be a distance of 25 miles, which would cost \$10,000 a mile exclusive of the bridge across the Elwah River which bridge would probably cost some \$40,000.

Now going from the timber out the other way, to the southwest to Grays Harbor, 70 miles of railway

equipped with sixty-pound rails, would cost probably about \$15,000 per mile. Added to this would be three large bridges at \$20,000 apiece.

Taking the proposed route by the Hoko River to the Straits, the witness made the following estimate: From the lands up the canyon on the Hoko, that is about thirty miles, a railway laid with steel would cost about \$12,000 per mile. The balance of it would run about \$20,000 per mile for about 12 miles. Asked as to the facilities for logging on the Straits between Port Angeles on the east and Neah Bay on the west, the witness says that there are practically but two places that would hold any logs and they are not extra good; one is Clallam Bay and the other is Port Crescent. They are protected at Clallam Bay only from certain winds. Logs dumped into the bay would be exposed to the northeast gales, which would drive them on the bank. You can't hold your logs during the winter. For five months of the year you could not hold logs there with any safety. You might dredge out logging ground at Pysht River. This river mouth is owned by Merrill & Ring, who own all the country in there, both sides of the river.

The witness being interrogated as to the character of the timber in these zones, says:

The character and quality of the timber in Zone 1 varies considerably.

At this point in the testimony the following occurred:

MR. FROST: I would like to reiterate that counsel has admitted in open Court that they accept and adopt and do not deny the County cruise.

MR. PETERS: Yes, sir; I think we are both bound by that.

In Zone 1, running westerly to the Elwah River, these lands are mostly gone over. From the Elwah River running westerly in Zone 1 they are pretty well logged off up to the Lyre River and partially cut over from the Lyre back to the Pysht. From the Pysht over the west boundary of the zone the timber is large, old grown fir. From Gettysburg on the

east to the Pysht on the west this timber would run about 50 per cent Hemlock and 50 per cent fir and from the Pysht River westerly it runs 75 to 80 per cent fir and 20 per cent hemlock. This is magnificent, old growth, fire timber that possibly would run from 65 to 70 per cent No. 1 logs. The timber stands upon good logging ground. The difference between the timber in Zone 1 and Zone 2 is simply in the grade. The Merrill & Ring and Goodyear tracts standing on the Straits are far superior to the Clallam Lumber Company's tracts, the difference being \$1.25 per thousand stumpage value in favor of the Straits timber, west of the Pysht River. The timber around the Pysht River and Clallam Bay is large fir, yellow fir, approximately an average of six or seven feet in diameter and 150 to 175 feet to the first limb. The main bulk of this large timber is free from knots, which gives it a high grade. The Clallam Lumber Company's timber is of medium size, probably averaging four feet on the stump. It runs clear but has considerable knots all through the main trunks of the timber, which makes what ordinarily would be No. 1 logs No. 2 or No. 3. There is very little clear timber in the logs. Their timber, marked in yellow on the map (Exhibit "A") the McCarthy timber, is a little inferior to the Clallam Lumber Company's timber, a much rougher class of timber.

On cross examination the witness Rixon, testified as follows:

That in the elevated lands separating the timber lying along the Solduc River in Zone 2 from the timber lying along the Calawa River in Zone 4 there is a pass about 800 or 900 feet high. There is a pass in the elevation near Sappho only about 350 above the the general level of the country and there is no unsurmountable difficulty in going there with a railroad. The estimates that he made of the grades of the railroad would not be from actual surveys upon the ground, but from general observation, in other words, just guess work from an engineering standpoint. The witness had never engaged in the logging business or

dealing in timber or timber lands, but had sold timber. The timber of the Clallam Lumber Company would run 20% number one logs, 60% number twos and 20% number threes.

As to his qualifications for testifying to the values of timber, witness testified that when he was examining for the United States Government he examined as to value and reported on the value of timber; that he had occasion to make appraisals for the Government as to the values of timber whenever any business came up about examining for a sale. The Government would forward it to him and he would make a report and estimate the cost of it. Thereupon defendants objected to the qualifications of the witness to testify as an expert, which objection was overruled and exception allowed. Whereupon the witness testified as to the timber valuations as follows:

Upon being asked if he knew the value on March 1, 1913, of the timber in Zone No. 1, witness testified, 'Well, I do not know whether I can say—I do not know just exactly the price of logs in 1913, * * * The only way to arrive at the value of that timber would be what it would cost to log and what you would get for the logs when they are put in the water both. * * * If I had the log values I could figure out what their actual worth was, but taking the log values as they are today I could give you the relative difference between the Strait's timber and the Clallam Lumber Company's timber and the holdings, pointing out what were the values of logs, and what they are worth when they are put into the water.'

He had seen the timber in Zone 1 opened up and cut out.

The witness testifies that as far as booming the logs there would be the same difficulties for the "Straits" timber as for the timber in the interior, so that that element, in his judgment would make no difference in the value of the Straits timber and interior timber, the considerations that lead the witness to conclude that the timber in Zone 1 was worth \$1.25 a thousand were simply the witness's estimate of what

the logs would grade and what the logs would be worth in the market outside of the cost of hauling them in, or towage, or anything like that, and the witness testifies that he has never gone over these tracts in Zone No. 1 and Zone No. 2 by acres, taking each ten acres, going over it a couple of times and making a thorough and detailed cruise and tree count. The witness says that the facility of falling, bucking and yarding and loading timber as compared with smooth ground and rough ground should be taken into consideration in establishing the value of the timber, and these elements would influence the cost of the logging, and that the largest part of the timber land on the Kalawa River is much rougher than the timber land on the Straits. Referring to Zone 2 he says there is rough ground on Beaver Creek, but that other parts of this Zone 2 are level and can be logged a lot cheaper than the timber in zone 1.

On re-direct examination the witness Rixon says there is approximately a township of rough and broken land around the Merrill & Ring holdings which makes difficult logging ground for half of the township that is located in zone No. 1. There is also some broken ground on the Goodyear property, between the Clallam River and the Hoko River properties, about a township, but the timber is close to the river. Referring to the interior lands the witness says that about all of the Kalawa, all of zone 4 and within about a mile of the Sol Duc River is difficult mountainous country to log in, and more difficult than any of the Goodyear or Merrill and Ring properties. The witness is asked:

“Take this timber lying in Zone 2, this red line that comes down dividing it from Zone 5 and from Zone 4, and coming in here in this point, and coming along here, take this timber here, and the timber on the south line, and the southeast corner of zone 2, and the timber immediately next in zone 4, what, if anything is there of difference in the character and quality of those two parts of the plaintiffs’ lands?”

A. That piece on the bench immediately south of Beaver Creek in there, there are two sections in

there of flat ground. They are medium sized trees, probably four feet, some of them probably five feet on the stump. When you leave the bench and climb up on the hillside, steep ground, the timber gets larger, probably a little better grade of timber on the slope of the side hill than it is on the bottom.

Q. The slope of the side hill, is that in zone 3, 2, or 4?

A. It is on zone 4, immediately north, on the bench.

Q. I understand the timber on zone 4 is larger and higher grade than in zone 2?

A. Yes, sir, it is.

Q. Take sections throughout zone 2, for instance, do they all run the same in character and standing of timber, or is there a difference in the run of the various sections?

A. The sections vary considerably, as regards to the stand and regard to the quality.

Q. You say with respect to the quality as well as the stand?

A. Yes, sir.

Q. Is that true of the timber both the Lacey Company timber, and the Timothy-McCarty timber?

A. The McCarty timber is very even all over, the same quality and the same size, and practically the same stand.

Q. The Clallam Lumber Company's land varies in regard to the size.

A. The Clallam Lumber Company's land varies in regard to size, density of the stand and the amount of the stand.

On cross examination the witness says: that he made a topographical map of this country in 1898, 1899 and 1900, which was made for the United States Geological Survey for the purpose of establishing the boundaries of the Forest Reserve, and estimating the amount of timber standing on the ground. This topographical map is introduced in evidence by plaintiffs as Exhibit "B" the contour lines representing 250 feet

in elevation. These were based upon actual observations and field notes.

Eugene France, a witness produced by the plaintiffs is sworn and testified as follows:

He lives at Aberdeen, came to the State of Washington in 1886, and has lived here continuously ever since. Was Mayor of the City of Aberdeen from 1906 to 1908 and from 1912 to 1915. Has been engaged in buying and selling timber in the state of Washington since he came to the state. Has bought perhaps two and one-half billion feet of timber as a moderate estimate, and is holding some. Has also purchased and sold timber in Oregon, handling there some twenty-five thousand acres. Has had some experience in logging and lumbering operations and has been interested in several logging concerns since he came to the State, and is now interested in one here in Pacific County, where with others he has been engaged in logging for the past six or seven years, they having put in from fifteen to thirty million feet a year on the average. Witness has also had some experience as a timber cruiser; was engaged in that business for fifteen or sixteen years in the State of Washington. Has had some acquaintance with the lands of the plaintiffs, those shown upon Exhibit "A" marked in red and marked in yellow, and he has heard the testimony of T. A. Rixon with reference to Exhibit "A." Investigated some of these lands as far back as 1892, and was over some of the lands, and has reports on them from a cruiser, showing the character of the lands and also the method of getting the lumber out, and recently at the instance of the plaintiffs he went down into that country, and had occasion to observe generally the physical situation of the lands to some extent. I had reports on that. Has had no acquaintance with the lands on the Straits except that he passed through a part of them where the Goodyear Company was logging, over by the Hoko River. Asked to give his opinion as to the value of the interior timber on the plaintiff's land, he says:

"A. Well, it would be very hard to place a buy-

ing value upon it, because timber in a general way has been depreciating since 1908, but I would think, that if the parties owning this timber could get an offer of \$1.00 per thousand for the fir, spruce and cedar, it would have been an offer that if I had been the one holding the timber I would very quickly have embraced."

Referring to the hemlock he says that hemlock has no value, and had no value in March, 1913. That he never put in any hemlock where he could avoid it, except it was in the way of other timber, but left it standing because he had not considered it worth logging. Witness is then asked:

"Q. Knowing the situation as you do, from your examination of the interior timber, and from Mr. Rixon's testimony, as to how it lies, the distance from the Straits, etc., what would you say was the market value of the fir, spruce and cedar in March, 1913, that is the value per thousand?

A. Do you mean the stumpage?

Q. Yes, the stumpage.

A. Well, I do not think you could have sold it for over a dollar a thousand, and I doubt if you could have sold it for that."

Asked as to the value of the timber in zone 1, now and in March, 1913, he says:

"Well, that timber that was handiest to the water and to the straits, it might be possible by logging to get \$2.00 a thousand for it."

"Well, I am not acquainted with the conditions in that part of the country enough to say positively; but I would say that two dollars a thousand would have been a good price for it."

Asked as to the quality of the timber from the Straits as compared with that from the interior, the witness says that so far as he observed the quality of the timber that lay out toward the Straits was superior to that further in the interior. There is not so much clear timber in the interior as upon the Straits. The timber in the interior would run more to No. 2 and merchantable logs. Witness says that the timber

market since 1910 has in a general way depreciated, and has kept depreciating. There has been no increase in the market value of timber in the State of Washington in the year 1914 over 1913. He thinks that timber values have fallen off since 1912 from 35% to 40% by a gradual change.

On cross-examination witness is asked whether on the recent trip he went out into the timber and made examinations of it. He says that he did in three or four places. He says that he did not make a thorough examination, but passed through on the roads that were cut through the timber, and walked out in the timber in different places, but did not attempt to cruise it in sections, they did not have time. He places a higher value upon the Straits timber than upon the interior timber because of its accessibility and because of the better quality of the timber. The witness did not examine detailed cruises showing the quantity and quality of the timber. The witness was asked, if by reliable cruise, it should be shown that the timber in the interior had a higher average stand per acre and graded of superior quality and that the logging conditions were easier, whether that would alter his views in any way. The witness answered that with the knowledge he had and the reports he had, he would have to 'put his peepers on it'; that he had not examined a recent cruise or cruises, topographical maps or reports upon the timber, except that he had seen some maps, the gentlemen had some maps, but he did not see the cruises; he had not examined any detailed cruises showing the quantity and quality. In other words, his judgment was rather an off-hand opinion. Mr. Polson recently made the witness an offer on six hundred million feet, which Mr. Polson's railroad is within three miles of. Witness says that he sold Mr. Polson about sixty million feet of timber in 1913 for \$145,000.00, this timber being right up against Mr. Polson's road. It is some twenty-five miles from Grays Harbor. He received for that timber an average price of not quite \$2.40 a thousand. Asked if this timber was not just as remote from Grays Harbor or the

only harbor or the only market as this timber in question here is from the Straits of Fuca, he says no, by no manner of means, he had logged right up next to the timber off this creek, and had run timber out and run it down to the Harbor. He says that you have to have a railroad to log this timber in suit, but he did not have to have a railroad to log his timber. The timber he sold to the Polson Logging Company was being logged to a railroad and was being hauled over a railroad, a private railroad in the next section. The Polson Logging Road extends back only about twenty miles. If the timber in the interior could be placed on a parity with the timber on the outside zone the witness would say that in the way of quality there was probably 75 cents a thousand difference.

Q. (Mr. Frost) Mr. France, would you put such observations as you have made, such investigations as you have made recently, and in the past concerning this timber up against a complete competent and reliable cruise?

A. Well, not if it were competent, complete and reliable, I would not; but I might investigate to see whether such was the fact or not.

Q. In other words you haven't based your opinion upon any cruise, or any complete or detailed information concerning this timber, but it is simply an impression that you have received from recently riding through the timber in an automobile, isn't that the fact?

A. No, sir; I had this same impression concerning this from the cruiser's report that went over it over twenty years ago.

Q. And your mind dates back twenty years ago?

A. That was the impression I had. I had his report and had access to it, and I had the same impression about the timber before I came to see it that I had after I had gone through it in the automobile.

Q. You rode through it in an automobile, as a matter of fact?

A. Yes, sir.

Q. That was the extent of your investigation?

A. As I told you, with the exception of two or three instances where we got off and walked into the timber.

Q. How far into the timber did you walk?

A. A half a mile, at times.

Q. Went in where there was a road?

A. Yes, sir; there were instances where we went a mile.

Q. Could you identify the sections you went into?

A. No, sir, I could not.

MR. FROST: I want to make an explanation to the Court right now. I made a slip of the tongue then, and many of us will do that, and many of the witnesses will in this case. This timber, if I may be permitted to make the remark, is known as the "Lacey timber," and "Lacey holdings" in Clallam County; and I presume counsel will make use of that statement also, and may it be understood when we refer to "Lacey timber" and "Lacey holdings" we mean the timber of the plaintiffs in this case.

A. I did have a way of locating myself on some of it, so I might state that I was on the Lacey holdings. They had maps with them, and they showed me the Forks, and showed me their timber laying right up next to this place called "Forks." I know that in riding through there I must have been on some of the Lacey holdings.

Q. You could not positively identify anything that you looked at?

A. Oh, yes, I could go back there and go over the same ground.

Q. But you can't tell the Court what you looked at?

A. No, sir, not exactly, I can tell you in a general way.

Q. Was your examination of the Straits zone as thorough and complete as your examination of the Lacey holdings?

A. No, sir, I don't think so; because I only left the car once to look at some of the timber that was

being cut by the Goodyear Company, in what was known as the Robinson tracts.

Q. As a matter of fact you simply traveled over the road from Sappho to Clallam and back again.

A. Yes, sir.

Q. And back again?

A. Yes, sir.

Q. In an automobile?

A. Yes, sir.

Q. Were you down to the Pysht?

A. No, sir.

Q. You got out of the automobile once, didn't you, to look at the timber?

A. To look at the timber where the Goodyear people were cutting.

Q. A short distance south of Clallam?

A. Not far from Clallam.

Q. Were you ever in this timber here? (Pointing.)

A. No, sir.

Q. Were you ever in this? (Another place.)

A. No, sir.

Q. Then, as a matter of fact all you know of it is simply hearsay?

A. I know what I saw; I told you what I saw.

Q. All you saw is what you saw from the automobile on the route that cuts about a few miles through one portion of the zone?

A. That is all I saw, was the Goodyear timber, the Robinson timber.

Q. Mr. France, what authority, upon what grounds do you say that that timber is worth approximately \$2.00 a thousand?

A. Well, that timber outside, I seen quite a bunch of it cut and I saw it in the log, and if it was all as good as that it would perhaps net a man more than \$2.00 a thousand.

Q. All you saw was the timber that lay along the automobile route?

A. It was back from the automobile road.

Q. How far back did you go?

A. I went back perhaps nearly a quarter of a mile.

MR. FROST: I want to call your Honor's attention to the fact that that zone is probably 50 miles long, 12 townships 6 miles to the township,—72 miles long.

On re-direct examination the witness says that the sale of timber, six hundred million feet that he referred to, that timber was then three miles off a logging railroad. The offer was made France and his people about in March, 1914, and was at the price of \$2.33 per thousand, but no sale was made. Questioned as to what would be the natural outlet for this interior timber to market, witness says that his reports show that it would come out to Grays Harbor better than any other point; that at this point in Grays Harbor there is a large lumber point, with large mills operating. Witness thinks that while it could be taken out by way of the Straits, that the logical outlet for it was by way of Grays Harbor.

THOMAS BORDEAUX, duly sworn on behalf of the plaintiffs testified on direct examination, as follows:

The defendants admitted of record that Mr. Bordeaux is engaged in the lumbering and logging business extensively, and that he has bought and sold timber lands and is well qualified as to the value of timber and with logging and manufacturing conditions throughout the State of Washington. He has lived in the City of Seattle continuously for eleven years. He was in Clallam County last July, which is the only time the witness has ever been in Clallam County. Went there at the request of the plaintiffs in this case and viewed this timber. He went down into the timber. Witness says that the location is quite remote at the present time, and the timber is separated from the Straits by a range of hills. 'Along the Straits he went in the wagon road that ran through it. We saw some of the Goodyear timber camp. They were building a railroad when I was there; they were just building a railroad.' Asked as to his judgment as to the com-

parative value of the Straits timber and the timber of the interior, he says that what he had seen of the Straits timber on the road from Clallam up to the summit is a little better grade than over the summit. He does not think there is much difference as to the comparative age of the timber on the Straits and the timber in the interior. He would value the fir, spruce and cedar of the interior lands in March, 1913, at about \$1.00 a thousand, and the hemlock at fifty cents per thousand, while the market value of the fir, spruce and cedar of the Straits timber at the same time was \$2.00 a thousand, and the hemlock of the Straits from fifty cents to seventy-five cents a thousand. He is acquainted some with the Grays Harbor country and would rather believe, what he knows about the country, that the natural outlet for the interior timber would be down to Grays Harbor. He thinks that the interior timber lands lie in very rough ground in the hills for the most part. Some of it lies along the river bottoms, which are not wide. In his judgment the timber on the interior lands was not the same in every section, in quality, character or stand; some sections were better than others. Timber is less valuable now than it was in March, 1912. Timber depreciated from 1912 to 1913 twelve per cent, and in 1913 and 1914 from ten to fifteen per cent more by a gradual depreciation.

Q. How extensive were your investigations and examination of this Lacey timber?

A. Not very much, just merely going through the timber, following the County road, the wagon road.

Q. In other words you went down through that country in an automobile and back, did you not?

A. Yes, sir.

Q. That was about all you looked at?

A. Yes, sir.

Q. That was the extent of your examination?

A. Yes, sir.

Q. And then you rode over the County road north to Clallam Bay?

A. Yes, sir.

Q. And back?

A. Yes, sir. We went to Forks Prairie from Clallam Bay, and then from Forks Prairie to Sol Duc Hot Springs.

Q. Did you go down through the timber to Quillayute?

A. The wagon road, went through the timber.

Q. Did you go down through the Lacey holdings west to Forks; in other words after you left the town of Forks you come back across the river, did you, back that road, and go back west to Quillayute prairie?

A. I am not able to say what the position would be west of the prairie now. There is a road that goes down to the mouth of the river?

Q. Yes, sir.

A. We did not go down there.

Q. You did not go down there?

A. No, sir.

Q. Then, as a matter of fact, if that was the case you did not see any timber belonging to Ruddock and McCarty in this zone, you did not even ride through it in an automobile?

A. Just rode in the automobile.

Q. In other words you came across to Clallam Bay?

A. Yes, sir.

Q. And down to Forks?

A. Yes, sir.

Q. And from Forks you rode back up to Sol Duc Hot Springs?

A. Yes, sir.

Q. And did not go into the timber of the plaintiffs, Ruddock and McCarty at all?

A. No, sir, did not go down there.

Q. Have you made a careful and thorough examination of the cruise of this timber with reference to the quantity and quality and the physical characteristics of it?

A. No, sir.

Q. You never have examined any cruise at all?

A. No.

Q. In other words, you are testifying upon the general impression that you got from riding along the public highway?

A. Yes, sir.

CROSS EXAMINATION

BY MR. EWING

Q. The conclusions that you drew in regard to the value of the timber, and its value being for logging purposes, and the natural market which you said you thought was Grays Harbor were depending to a considerable extent on what was told you by people who were with you and not by independent investigation you made yourself?

A. Well, I was told a great deal about it, about the elevation of that summit being a thousand feet high; that was what I was told. I can't prove that. We could see enough timber to have a pretty good idea about what the character of the timber itself is, and about the valuation of it too.

Q. I understood in one of the first questions asked you that you answered that you had never been in Clallam County but once?

A. That is all.

Q. And that was the time you went on this trip to look at this timber?

A. Yes, sir.

Q. You don't know anything about the timber conditions and logging conditions in Clallam County except what you discovered on that occasion?

A. No, sir."

Witness excused.

John A. Rea, witness on behalf of plaintiffs, testified as follows:

Has been a resident of the State of Washington for twenty-five years; lives at Tacoma. Is acquainted with property and property values throughout the state. Has been a Regent of the University of Washington for five years, which institution has about fifty thousand or fifty-five thousand acres of land. Has had occasion in this connection to examine into the gen-

eral value of timber. Also apart from his experience as Regent he has bought and sold timber lands in small quantities since 1890 in a dozen counties or more. The witness has had no specific experience in timber lands in Clallam County other than one trip through the County recently. The University has about four hundred acres of timber land in Clallam County near Lake Crescent. He went down about a month ago at the instance of the plaintiffs to look over this timber in connection with Mr. Bordeaux, Mr. Martin Grayham and Mr. Earles. Rode down through the timber and got out occasionally and looked at it. They went into the timber very little, not enough to say that they were in the timber very far. Asked about the character of the land upon which the timber stood witness says, "Principally you would call it hilly, almost mountainous back of Clallam Bay; we were travelling over a rough country, from general observations would say it was a broken country." Went through the timber of the Goodyear Logging Company on the wagon road and looked over the logging road the Goodyear people are putting in near the Hoko River. He is not prepared to compare the quality of plaintiffs' timber with that in zone 1, because he was not in the timber on the Straits and only knows of it by hearsay and common report. Would say that the Straits timber was worth double the timber of the interior because of the logging conditions and the distances and the isolation. On the Straits logging operations are possible at once even without a railroad, whereas in the interior one would have to build a logging road. Would say that hemlock was of no value at all—worth perhaps thirty cents or forty cents a thousand, and in the interior many buyers would not pay anything for it. He says that the timber market has been running off since 1910. He says that there have been no considerable sales of stumpage timber since 1913; that he follows the records, takes the newspapers and had not seen or heard of any.

On Cross-examination the witness, Rea says that after you get down into the Sol Duc Valley the land

is comparatively level. Witness admits that he would not buy this timber upon the examination he made of it. Witness does not know of the quality of the plaintiffs' timber in detail as against the quality of the timber in zone No. 1. If the timber in the interior were placed alongside the timber of the Straits it would be worth the same amount in the witness' judgment; the nearness to the transportation governs. The witness does not know anything about what the relative cost of logging plaintiffs' timber would be. When asked if that is not an essential factor in determining those things, the witness answered that the plaintiffs' timber is largely a speculative proposition and the witness does not know when it will be in demand after it is cut; he does not know whether the plaintiffs' timber can be cheaply and economically logged to the water; that is up to the logger to tell him; he does not know the quantity and quality of the plaintiffs' timber, but admits that it does cut a figure in the value. Witness does not know what the stand of timber in there is or what it grades and says, 'That has nothing to do with my notion.' Witness thinks that the value of the timber on the Straits is not speculative whereas that in the interior is speculative because of the want of transportation facilities. He does not know what the relative cost of logging the interior timber and of logging the Straits timber would be. He does not know the details or the character and quality of the timber on the lands, nor how many million feet there might be, nor how much per acre, nor how much No. 1 or how much No. 2. He does not think the interior lands are worth more than \$1.00 per thousand and it has to be held from ten to twenty years.

Earl C. Duvall, produced as a witness on behalf of the plaintiffs, having been first duly sworn testified as follows:

That he has been in the State of Washington since 1881, and a timber cruiser since 1888; was employed by the Port Blakeley Mill Company, the Northern Pacific Railroad Company, the Mason County Logging Company, and others; has bought and sold timber and

engaged in logging. He had charge of cruising timber lands in the west end of Clallam County in 1911, 1912 and 1913, a portion of those years. He had charge of the men in the field examining their work and checking it up. Referring to plaintiff's exhibit "A", and the lands marked in red and yellow, witness had substantially been over all these lands, and was acquainted with the character of the timber and the logging conditions and the general topography of the country. He was in attendance in court when Mr. T. A. Rixon testified and heard generally his testimony. The witness is asked by the plaintiff's counsel whether or not in his work as a cruiser he had occasion to observe the height of the passes on Beaver Creek and others. The witness describes the course of the summits or high land shown on the map, Exhibit "A". The summit he says is very crooked; there is quite a divide running along through the unsurveyed land, which is marked by blank spaces, and following a rather crooked course from the head of the streams, climbing bends. The bend divides to the south and the other branches bend up north. The blank spaces on the map would in the main indicate the course of the summit, these being unsurveyed portions. Referring to the timber, witness says that the Hoko tract of fir and spruce, and the Pysht fir and spruce are the best quality of timber, and a little older growth than the Sol Duc tract. Taking the timber in the Straits in Township 31, Range 9 and township 31, Range 10, over the Twin Rivers, there is probably two-thirds of it that is younger growth timber than the average timber on the north slope, and this would be on the market as logs of lower grade. After crossing the Twin Rivers to the west, from there on to the Pysht and from there up to the Burn on the Pysht the timber is largely old-growth fir. There is some on the slopes of the Straits that is younger growth, but the general body of timber is deteriorating from age and should be logged. It is the oldest growth timber in the country, and would probably cut a bigger per cent of clear than the timber further up. The zone line between zone No. 1 and zone

No. 2 seems to follow along the divide on the Straits' side of the divide. Adjoining sections of this timbered land vary materially in quality. He knows of no township where the quality of the timber runs uniformly throughout the entire township. Sections vary in quality and quantity. In the opinion of the witness the value of the timber lands marked in red, March 1, 1913, would be a dollar a thousand feet; he thinks there would be no change in the value between March 1, 1913, and March 1, 1914. "It is purely a speculative proposition, away from transportation. I do not think there has been much change in the last year in the value; logs are about the same price, a little hard to sell." The above price, \$1.00 a thousand refers to fir, cedar and spruce, the hemlock would not exceed fifty cents a thousand. He does not consider that there is any difference between the value of the hemlock marked in red and that marked in yellow. The timber in yellow stands on a little better ground, but is possibly not quite as good quality. Has never known of hemlock ties having any commercial value. They would only be of value to a person probably constructing a logging road. He would consider the fir, spruce and cedar on the lands about the Pysht and the Hoko to be worth about \$2.00 a thousand, and the hemlock about seventy-five cents a thousand. The witness bases the difference in value between the interior and exterior timber upon the facility of transportation, nearness to market and nearness to market, and the Hoko timber is a little better in quality—the fir and spruce. Since leaving the employment of Clallam County witness had been employed by Pierce County, checking up their values of timber lands, coal lands and farm lands. There had been no change in the market value of timber between March 1, 1912 and March 1, 1913, and no increase in the market value in 1914. Witness thinks that the body of the timber lands of the plaintiffs along the Sol Duc and Quillayute Rivers is probably a bigger body than the Straits timber. In saying this he excludes everything west of the Hoko River, the latter being the hemlock belt, which he would not con-

sider logging. That is a purely speculative proposition, you could not sell it if it was in the water.

On cross-examination, the witness testified that he cruised the timber in Pierce County for the purpose of assessments and taxation, and that having finished that job, he went up and cruised the West end of Clallam County; he had full charge of the cruise in the field and full power to employ and discharge his assistants; that that cruise was a fair and honest and conscientious cruise, the same cruise he would make for a corporation or an individual; that he thinks the cruise is a fair cruise; that it is an honest and fair and full cruise of the timber, and that to the best of his judgment and of the men who did the work, the quality of the timber, the physical characteristics of the ground, the logging conditions, and the other things that are explained in detail upon the cruise (which was later introduced in evidence as Defendants' Exhibits 19 and 20) are recorded truthfully and accurately.

M. H. Graham produced as a witness on behalf of the plaintiffs, being duly sworn, testified substantially as follows:

Mr. Graham's qualifications as an expert timber man and operator in all departments, was admitted by the defendants.

He had passed through the timber lands marked on Exhibit A some time ago, with Mr. Bordeaux and Mr. France, for the purpose of giving judgment upon the value and character of the lands. They did not make a very thorough examination. As to its general character it is a very good timber tract. He did not examine very thoroughly the character of the land as a logging proposition, as to whether it was broken or level. They only passed through the lands on the Hoko and Pysht on the County road. They made about the same examination of them as of the interior lands. And the witness further testified as follows:

Q. What, in your judgment, is the comparative, —what is the comparison of the character and quality in the first place, and then of the value, if you know, of the lands on the Straits, the Hoko and the Pysht

lands, that you observed, and the interior lands of the plaintiffs?

A. I do not hardly think I am competent to answer that question. A person passing along the County road necessarily gets very little knowledge of a country. You do not see very far into the forests, and the only thing that you know is what you see; and passing along a County road, that passed through good timber practically all the way; and on the Clallam slope the timber that we saw appeared to be a little larger and a little older growth than it did on the interior.

Q. What would be your judgment as to the difference in value as to the two, by reason of the character and quality such as you had occasion to observe it, and by reason of its location, the two classes of timber, that upon the Straits and that in the interior?

A. That is a pretty hard question for a person to answer with the limited opportunity to examine the timber that we had. We left Clallam Bay and went up through the timber there. The country was pretty rough that we were over. We ascended over on the divide there, and that divide was quite rough. As we got over the hill and got down in the Hoko valley, the ground was better, but the timber was not as good quality; but the ground was better, and all this enters into the value of the timber.

Q. You said the "Hoko" valley, you mean the Sol Duc; after you got over the divide and got into the Sol Duc?

A. Yes, sir, I mean the Sol Duc."

As to the relative value of the timber on the Straits and the timber on the interior the witness doesn't think that there was much difference in the hemlock because it has no present value anyway. Hemlock in Clallam County in March, 1912, was perhaps worth 40 cents per thousand. Hemlock at that time had no value. Timber buyers were not paying anything for hemlock. It had no value except perhaps in rare instances where a railroad passes through it and where there is an opportunity to mill it on the ground and load it on the car, but where it has to be logged

and put into the water and towed, it had no value at all at that time.

There has been no change in the market value of timber lands in the state of Washington in 1912, 1913 or 1914. The tendency has been downward all the time since 1910, a gradual depreciation. The depreciation of timber from March, 1912, to March, 1914, was about 15 per cent, and since March, 1914, there has been a depreciation of 10 per cent. Fir, spruce and cedar on the interior lands on March 1, 1913, had a market value of about \$1.00 per thousand.

On cross examination the witness testified substantially as follows:

He would not be willing to buy this timber from the examination that he made unless he bought it very cheap. He never examined the grades of the timber down there. His opinion was based upon what he saw on this trip of the timber and what he has always heard of it. He had not examined the cruises so as to form an accurate opinion about it. Witness had heard the testimony of other witnesses in the case. T. A. Rixon and Mr. Duvall, but his judgment of the values was not based upon such testimony. If witness examined the cruises and was accepting the cruises and reports as being accurate, honest, careful cruises, his mind might be a great deal changed; he is basing his testimony on what he saw down there on the road; he thinks they crossed the Sol Duc River. Witness was asked if they were off the wagon road to get off the trail at all and says: "Not to any extent."

William J. Ware, produced as a witness on behalf of the plaintiffs, being first duly sworn, testified substantially as follows:

He is 46 years of age. He resides in Port Angeles. He has been acquainted with the values of real property in Clallam County for some 25 years; has been engaged in the real estate and insurance business; has bought and sold lands, both agricultural and city property in Clallam County and knows the values of such lands for the period covering the years 1910 to March, 1914.

At the request of the plaintiffs he has gone over the values of lands in the business section of Port Angeles. Witness is referred to the valuation map of Port Angeles property, with values which he had placed thereon, and his examination directed to it.

MR. FROST: We desire at this time to enter an objection to this question upon the ground that it is not a comparison of property of like character and similarly situated as the property of the plaintiffs concerning which they are complaining in this court. And we desire to object further upon the ground that it does not appear that these plaintiffs with the knowledge of the fact that this property was under assessed, appeared within the time required by the Statutes of the state of Washington and entered a protest or asked the Board of Equalization to raise this property, as they had a right to do.

THE COURT: The objection is overruled.

MR. FROST: Note an exception.

THE COURT: Exception allowed. The property being so dissimilar I am inclined to think it would require a very strong showing of disparity in relative values to be made the basis of the court granting relief to the plaintiffs on this ground. I cannot say how strong that would be; so I overrule the objection.

MR. FROST: We want to make a record at this time and we want to argue that point perhaps more extensively at the conclusion of the case.

MR. EARLE: The appearances of the plaintiffs for the purpose of protesting, the different appearances have been alleged in the complaint and have been admitted by the defendant. One of the allegations with reference to the appearances was with reference to an arbitrary denial.

MR. RIDDELL: You do not allege that you appeared before the board and protested. You did appear before the board and protest, and that protest was denied, but you did not appear within the ten days within which the board is required to give notice. The statute provides that the board must give ten days'

notice of any raise of the property, and you did not appear, and until that fact is shown, it is absolutely immaterial, because they have not laid the proper foundation for it.

It may be understood that we object to all testimony concerning all other property except that of like character and similarly situated, and we have an objection to the ruling, and that it all goes in under our objection and exception.

MR. PETERS: That is our understanding.

THE COURT: Exception allowed. The witness produced a map, Plaintiffs' Exhibit "C," upon which he had already marked his estimate of the valuations of real estate in Port Angeles on March 1st, 1913, and on March 1st, 1914, and, placing said map on the easel in front of him, in response to questions by plaintiffs' attorneys, he read on said map in each instance the figures which he had placed thereon as aforesaid, showing his judgment of the value at the two periods in question of the property to which he testified and testified as follows, to-wit:

A. I should judge in the neighborhood of \$15,000.00. The value of that Lot 1, Block 1, Tide Lands west of Laurel Street, on March 1, 1914, was about \$25,000.

Q. Lot 2, in the same block in 1912?

A. In 1912, in the neighborhood of \$10,000.00.

Q. In 1914?

A. \$16,000.00.

Q. Of lot 3 in 1912?

A. There is very little difference, probably eight or nine thousand dollars in 1912.

Q. In 1914?

A. About \$14,000.00.

Q. Lot 4?

A. It would be the same.

Q. In 1912 and 1914 it would be the same as lot 3?

A. Yes sir, about the same.

Q. Lot 5?

A. That is the same, and lot 5 is the same.

Q. Lot 6?

A. Lot 6 was probably worth about five hundred dollars less than the other.

Q. What would that make the amount?

MR. PETERS: \$8500.00 for 1912 and \$13000.00 for 1914?

A. Yes sir.

Q. Mr. Earle: Lot 7?

A. That would be the same.

Q. Lot 8?

A. When you get to the end of that block it is rather cut up into smaller pieces and different than it shows on the map. If you take the lot as a whole—did you say Lot 8?

A. Lot 8, yes sir. Oh, that would be worth probably eight thousand dollars in 1912, and about twelve thousand five hundred in 1914.

Q. And lot 9?

A. Practically the same.

Q. And lot 10 on the corner?

A. Well lot 10, taken as a whole, of course, in actuality it is not held in one lot, but if it was it would be worth, about, on, I should say about ten or twelve thousand dollars in 1912.

Q. In 1914?

A. About \$18,000.00.

Q. Coming to the block of tidelands, on the other side of Laurel Street, the tidelands east of Laurel Street, lot 1 in block 1 of 1912?

A. That would be about the same value as lot 1, block 1 west of Laurel Street.

Q. \$15,000.00 in 1912, and \$25,000.00 in 1914?

A. Yes sir.

Q. Lot 2 in Block 12?

A. About \$10,000.00.

Q. And in 1914?

A. About \$18,000.00.

Q. Lot 3 in 1912?

A. There would be about a thousand dollars difference in their values.

Q. Which way, up or down?

- A. Down.
- Q. \$9000.00 you put in then in one instance and \$17000.00 in another?
- A. Yes sir.
- Q. And lot 4 in 1912?
- A. Well, possibly a thousand dollars difference, also.
- Q. Eight thousand dollars?
- A. Yes sir.
- Q. And in 1914?
- A. About \$16000.00.
- Q. And lot 5?
- A. That would be practically the same.
- Q. Lot 6.
- A. About \$8000.00 in 1912.
- Q. And in 1914?
- A. About \$15000.00.
- Q. Lot 7 in 1912?
- A. Well I should say about \$7500.00.
- Q. In 1914?
- A. About \$14,000.00.
- Q. Lot 8?
- A. Lot 8 would be worth about \$7000.00.
- Q. And in 1914?
- A. About \$13,000.00.
- Q. Lot 9, the corner lot there, what was that worth in 1912?
- A. In 1912, lot 9 was worth about \$12000.00.
- Q. In 1914?
- A. \$18,000.00.
- Q. The tide lands east of Laurel Street, lot 2, block 1, in 1912?
- A. Practically the same as lot 9 in block 1.
- MR. EWING: Lets have the figures. We can't refer back that way.
- A. About \$12000.00 in 1912 and \$18000. in 1914.
- Q. (Mr. Riddell) Lot 1, Block 2 tidelands east of Laurel Street is that right?
- A. Yes sir— no, that would be lot 9 in block 2, instead of lot 1, in block 2 that I referred to then.
- MR. RIDDELL: What was the valuation?

A. \$12000.00 in 1912, and \$18000.00 in 1914. That is lot 9, block 2, east of Laurel Street.

Q. (Mr. Earle) Has the order been reversed all through?

A. Yes sir.

MR. RIDDELL: I think that is wrong too. I think we have the values wrong in block 1. We started with Lot 1 but that is reversed.

WITNESS: Yes sir.

MR. EARLE: Then it is backwards. It is the other way. Numbering from 1 to 9, and the figures would be reversed.

THE COURT: The figures are reversed in lot 1, block 1 east of Laurel Street?

WITNESS: The figures are reversed in lot 1, block 1 east of Laurel Street; the figures would be reversed, and lot 1 would be lot 9 as I have testified.

Q. (Mr. Ewing) Are you testifying from actual knowledge and acquaintance with this property, or from a schedule on this property as you testified.

A. Well I made these figures from what I supposed to be actual knowledge, my own knowledge.

Q. Are you able to place in your mind, as the questions are put at you the exact property regarding which you are testifying.

A. Yes sir.

Q. (Mr. Earle) Which order is going to be right here?

A. Connig this way, we start with block 9, and going back with lot 1; that will take it in rotation.

Q. Mr. Earle: I will ask it in reverse order.

Q. Lot 8, block 2, tidelands east of Laurel Street was worth what in 1912?

A. That would be worth about \$8000 in 1912, and \$12000.00 in 1914.

Q. Lot 7 in 1912?

A. Lot 7 in 1912, in block 2, east of Laurel Street would be worth about \$6000.

Q. And in 1914?

A. About \$10,000.00.

Q. Lot 6 in 1912?

A. About \$5000 in 1912, and about \$8000 in 1914.

Q. Lot 5?

A. Lot 5, about \$3500. in 1912 and \$6000 in 1914.

Q. Lot 4 in 1912?

A. About \$2500. in 1912 and \$5000. in 1914.

Q. Lot 3.

A. The same.

Q. Lot 2?

A. About the same.

Q. And lot 1 is the corner lot, isn't it?

A. Yes sir, lot 1 would be worth about \$5000. I should judge in 1912 and about \$8000 in 1914.

Q. Coming on down now to the townsite of Port Angeles, in Block 14, going in numerical order, will you give the value of lot 1, in block 14 of the townsite in 1912.

A. About \$6000.00.

Q. And in 1914?

A. \$11,000.00.

Q. And Lot 2?

A. Lot 2 in 1912 about 3000.00.

Q. And in 1914?

A. About \$6000.00.

Q. And lot 3?

A. Well that would be the same.

Q. Lot 4?

A. About \$2500.00 in 1912 and about \$5500.00 in 1914.

Q. And lot 5?

A. About \$2500.00 in 1912, and \$5000.00 in 1914.

Q. Lot 16?

A. What did you ask about? you were asking about lot 5?

Q. Yes sir, but I jumped to 16?

A. Lot 16 was worth about \$4000.00 in 1912.

Q. And in 1914?

A. About \$7500.00.

Q. Lot 17?

A. Lot 17 was worth about \$4000.00 in 1912 and about \$8000 in 1914.

Q. Lot 18?

A. Lots 18 and 19 would be the same.

Q. And lot 20?

A. About \$8000. in 1912 and about \$15000. in 1914.

Q. Block 15 of the townsite, what would be the value of the lots, say in 1912?

A. 1912, \$12000.00 I should say.

Q. And in 1914?

A. About \$20,000.

Q. Lot 2?

A. About \$6000. in 1912 and about \$9500. in 1914.

Q. Lot 3?

A. Lot 3 would be practically the same.

Q. And lot 4?

A. Lot 4, 5 and 6 would be practically the same.

Q. At what prices?

A. They would be \$6000. in 1912 and \$9500. in 1914.

Q. And lot 7?

A. \$5500. in 1912 and \$9000. in 1914.

Q. Lot 8?

A. About \$5000. in 1912 and about \$8000. in 1914.

Q. Lot 9?

A. That would be the same.

Q. And lot 10?

A. About \$8000.00 in 1912 and \$12000 in 1914.

Q. Lot 11?

A. \$8000. in 1912 and \$12,000. in 1914.

Q. Lot 12?

A. About \$4000. in 1912 and \$8000. in 1914.

Q. Lot 13?

A. Practically the same.

Q. Lot 14?

A. Practically the same.

Q. Lot 15?

A. About \$4000.00 in 1912 and \$8500 in 1914.

Q. And lot 16?

A. \$4000. in 1912 and \$9000. in 1914.

Q. Lot 17?

A. Lot 17, 18 and 19, would be about the same as lot 16.

Q. And lot 20?

A. It would be about \$16000 in 1912 and about \$17500 in 1914.

Q. Take block 16 of the Norman R. Smith Addition, the corner of Front and Laurel Street.

A. The next block to all of those?

Q. Take lot 1, what was it worth?

A. Lot 1, about \$3500.00 in 1912 and about \$8500. in 1914.

Q. Lot 2?

A. Lot 2 would be about \$4000. in 1912 and about \$8000 in 1914.

Q. Lot 3?

A. About \$4000.00 in 1912 and about \$8500 in 1914.

Q. Lot 4?

A. About \$4500. in 1912 and about \$9000 in 1914.

Q. Lots 5 and 6.

Mr. Earle: If your Honor please, Mr. Darwin, the State Fish Commissioner is one of our witnesses and is here at considerable inconvenience and we would like to call him out of order if there is no objection.

MR. FROST: No objection.

THE COURT: Very well.

WILLIAM J. WARE recalled for further direct examination testified as follows:

By MR. EARLE:

Q. Go ahead with lots 5 and 6.

A. Lots 5, 6, 7 and 8 would be about \$5000 in 1912 and \$9500 in 1914.

Q. (Mr. Ewing) Are the answers intended to include your value on the lots with the improvements or the land alone?

Q. (Mr. Earle) Is your valuations given on the ground value alone?

A. On the land value.

Q. (Mr. Ewing) It does not include the improvements?

A. No sir.

Q. (Mr. Earle) Lot 9, in 1912?

A. I should say about \$12000.00 in 1912, no it would not be that much—about \$12000 in 1912, and about \$20000 in 1914.

Q. Lot 10 in 1912?

A. About \$10000 in 1912 and about \$17,500. in 1914.

Q. And lot 11?

A. About \$5000. in 1912 and about \$9000. in 1914.

Q. Lot 12?

A. About \$4500. in 1912 and about \$8500 in 1914.

Q. Lot 13?

A. \$4000 in 1912 and \$8000 in 1913.

Q. Lot 14?

A. About \$4000.00 in 1912 and \$7500. in 1914.

Q. Lot 15?

A. \$4000. in 1912 and \$7500. in 1914.

Q. Lot 16?

A. \$3500. in 1912, and \$6500. in 1914.

Q. Lot 17?

A. \$3500. in 1912 and \$6500. in 1914.

Q. Lot 18?

A. \$4000. in 1912 and \$7000. in 1914.

Q. Take block 17, the next block east there, beginning with lot 7, give the value in 1912.

A. A thousand dollars in 1912 and \$2500. in 1914.

Q. Lot 8?

A. About \$1500 in 1912 and \$3000.00 in 1914.

Q. Lot 9?

A. \$2500. in 1912 and about \$5000. in 1914

Q. Lot 10?

A. About \$3000.00 in 1912 and about \$6000.00 in 1914.

Q. Lot 11?

A. \$2500.00 in 1912 and \$5000. in 1914.

Q. Lot 12?

A. \$2000. in 1912 and \$4000. in 1914.

Q. Turning now to block 32 of Norman R. Smith's Addition, or subdivision.

MR. RIDDELL: Where is that?

A. It is between Carolina and Victoria and Race and Francis Streets.

Q. In this block 32, take lot 1 in 1912, what was the value?

A. Well it was worth very little in 1912; I think probably \$100. would be a good price.

Q. In 1914?

A. \$250.

Q. Could you make any approximate value running over the lots in that block, say between the corners and shorten this?

A. They are fractional lots from 1 to 8. They are on the hillside, and I am inclined to think it would be pretty hard to put any valuation on them.

Q. Turn to block 31 of Norman R. Smith's subdivision, and take lot 1 in 1912.

A. It was worth about \$4000. in 1912 and \$7500. in 1914.

Q. And lot 2?

A. \$3000. in 1912 and \$6000. in 1914.

Q. Lot 3?

A. Lots 2, 3, 4, 5, 6, 7 and 8 are practically the same, \$3000. in 1912 and \$6000. in 1914.

Q. Lot 9?

A. \$4000. in 1912 and \$8000. in 1914.

Q. Lot 10?

A. \$800. in 1912 and \$2000. in 1914.

Q. Lot 11?

A. \$700 in 1912 and \$1500. in 1914. That would apply to lots 11, 12, 13, 14, 15, 16 and 17 in block 31.

Q. Lot 18?

A. Would be about \$800. in 1912 and \$2000. in 1914.

Q. Take block 30, the next block east there, lot 7?

A. About \$1500. in 1912 and about \$3000. in 1914.

Q. Lot 8?

A. \$1750. in 1912 and \$3500. in 1914.

Q. Lot 9?

A. \$3000. in 1912 and \$5000. in 1914.

Q. Lot 10?

A. Worth about \$800. in 1912 and about \$1,500 in 1914.

Q. Lot 11

A. About \$500. in 1912 and about \$1000. in 1914.

Q. Lot 12?

A. About \$500. in 1912 and about \$900. in 1914.

Q. Take now block 2½ tidelands east of Laurel Street?

A. There is no valuation given.

Q. You place no valuation on that block?

A. No sir.

Q. Could you form an opinion of the tidelands east of Laurel Street blocks three to eight and a half?

A. No sir I could not form any opinion on that. There have been no sales in there of any kind.

Q. Come now to block 18 of Norman R. Smith's subdivision, what would you value lot 6 at in 1912?

A. Lots 6, 7, and 8 would be about \$1000. in 1912 and about \$2000. in 1914.

Q. Lot 9?

A. \$1500. in 1912 and \$3000. in 1914.

Q. Lot 11?

A. \$2000. in 1912 and 3500. in 1914.

Q. Lot 12?

A. \$1700 in 1912 and \$2500. in 1914.

Q. Block 19 of Norman R. Smith's subdivision lot one?"

It was thereupon stipulated that the witness Ware might prepare a tabulation of these properties with his estimates of their values and submit this table to stand as his own testimony, as Exhibit — in the case; also

a map prepared by the witness with values marked thereon which had been referred to in his testimony was admitted in evidence as plaintiff's Exhibit C.

The witness explains that he was three days making this map; that he was already acquainted with the vast majority of the property and such as he thought he did not know he went out and examined.

The property referred to by the witness on the map "C" was the central portion and business portion of the town of Port Angeles. There were then two wharves in the town, in 1913 and 1914, one at Oak Street and one at Laurel Street. The map "C" extends to the limits of the government townsite on all sides. There is no business property outside of the district indicated by the witness excepting scattering stores.

It was stipulated that the witness Ware was to submit a tabulation of his values of suburban properties in the same manner as of the urban properties and that this shall stand as his testimony upon these matters.

The witness is then asked by plaintiffs' counsel: "Where is the largest area of improved agricultural lands in Clallam County?"

To which the defendants made the following objection:

"We desire at this time to offer the same objection that we made at the introduction of testimony concerning the property in the city of Port Angeles, namely, that it is not like property similarly situated of the same character and description and also that these parties did not appear before the Board of Equalization and enter a protest as to the discrepancy in these estimates within the time limited by law, which would have permitted the County Board of Equalization to have made an increase in the value of this property, provided it was under assessed as to valuation."

THE COURT: Objection is overruled. I claim that there is nothing before the court now to determine what protest they did make."

MR. EWING: We are making the objection to make a record.

THE COURT: The objection is overruled.

MR. EWING: Note and exception.

THE COURT: An exception is allowed.

The witness answers that the largest bodies of agricultural lands is in the Dungeness and Sequim country. Witness is asked whether, in his business as real estate dealer, he has ever been familiar with the values of agricultural lands as well as those of urban properties, and he answers, "Yes, to a certain extent." He states that what is known as Sequim Prairie includes portions of Sections 17, 18, 19 and 20, township 30, range 3. The major portion of this land is irrigated land. The values of lands in section 17 run very uniform.

The witness says that he has been in the real estate business in Clallam County for 12 or 13 years. He did not reside in Clallam County all the time but was doing business there, and had occasion during that time to keep acquainted with the buying and selling of agricultural lands, as well as city lands and was familiar during that time with the fair market value of agricultural lands, that is from 1912 to 1914. The average value per acre of Sequim prairie land in March 1912 was from \$100. to \$125.00 per acre for improved property. In March 1914 it was not less than \$200. The same price would apply to a majority of section 18.

Referring to sections 19 and 20, in 1912 considerable of that land was and is yet unimproved. The market value of it in 1912 was \$30. per acre. In 1914 from \$50. to \$75 per acre. In section 19 the average value in 1912 of agricultural land which was under cultivation and which was not city property, was from \$30. to \$125.00 per acre. Lands in that section which were under cultivation were of an average value of \$125. to \$150. per acre.

The witness' testimony is referred to a map offered and admitted as Plaintiffs' Exhibit D. Referring to this map and to the unplatted portion of section 20, the witness says that on March 1, 1912 these would

average a valuation of \$150. per acre and in 1914 \$350. per acre.

Referring to section 32 or the north half of it, the witness says that this is timber land and was worth in 1912 about \$15. per acre and in 1914 \$35. per acre.

There was offered and received in evidence plaintiffs' Exhibit Q, being a tabulation of the witness Ware's opinion of the value of properties therein named, set opposite the assessed valuations of said properties for the years 1912 and 1914, the figures in red ink showing the witness' estimate of the value, it being admitted by counsel on both sides and the court, that such statements on the tabulation shall be taken as the actual showing of the Assessor's books as to the assessed values, and shall stand as the testimony of the witness as to valuations; but in this Exhibit "Q" the column headed "Assessed Valuation for 1910" and the first column "Valuation by Appraisal Committee" which is lined out in pencil, should be considered as stricken out as not competent.

Similar tabulation with reference to the assessment for 1912 and 1914 and the witness' valuation of agricultural lands was offered and received as plaintiffs' Exhibit "R", with the same stipulation as to the force and effect of the statements therein contained.

The witness Ware further testifies that there are not now and were not in 1914 any industrial plants in the neighborhood of Port Angeles, besides the Aldwell Power plant and Mike Earles' mill, and a salmon cannery, some shingle mills and saw mills. There were no large manufacturing plants in that neighborhood.

The witness states that the William Dick property, the Stewart property, McLaughlin, McAlmonds and Lotzgesell property, the James Dick property, Peter Cassarlary, Donald McInnis, Hart, Horn and Straits Live Stock and Dairy Farm property, are typical or representative of the highest type of agricultural lands in the Dungeness valley.

Cross examination of Mr. Ware:

The witness testifies that there was a marked

Insert after first paragraph on page 143 the following as part of Ware's cross-examination:

Q. You knew of the boom in Port Angeles?

A. Yes, sir.

Q. You know what a boom is?

A. Yes, sir.

Q. There was a boom there?

A. I should say there was.

Q. A regular rip-roaring boom, an old fashioned boom?

A. Call it anything you like.

Q. And you agree to call it the same thing I call it?

A. Pretty near it.

Q. Don't you know also from current report and your own knowledge that it was an entirely artificial boom, don't you know as a matter of fact that it was engineered from Seattle?

A. No, sir, I do not know that.

Q. Do you know where it was engineered from?

A. No, sir.

Q. Do you think it was spontaneous?

A. I do not know what you mean by "spontaneous."

Q. That it sprung up without any direct and contributing cause?

A. I do not think that.

Q. What do you mean?

A. Possibly it may have been produced without any afore thought on the part of the man who produced it, or men who produced it.

Q. It was produced by men, though?

A. I should judge so.

Q. When do you think that begun to the best of your judgment?

A. I think it begun in the fall of 1912.

Q. When do you think that it was just about over?

A. It is over now.

Q. Wasn't it subsided—

A. Yes, sir, in the fall of 1912.

Q. That is when it began. When do you think it had subsided?

A. It has been subsided ever since.

Q. When did the improvements in street grades, by way of street grading begin up there in Port Angeles?

A. I think in the spring of 1913; that is my recollection.

Q. Wasn't it in the spring of 1914, about a year and a half ago?

A. Yes, I guess it did.

increase in values in Port Angeles city real estate beginning before the first of March, 1912 and ending before March 1, 1914, and a subsidence which began prior to March 1, 1914. There was a boom in Port Angeles real estate beginning in the fall of 1912, lasting about sixty days.

The witness said that he moved to Seattle in the Spring of 1907 and returned to Port Angeles and was in business there in the winter of 1912 and 1913 and moved his family there in the spring of 1914; took up business there in November, or December, 1912. During the same time he had dealt in Clallam County property as well as Port Angeles property. He resided however in Seattle, but while residing in Seattle, his business was mostly in Clallam County property. He resided and did business in Port Angeles continuously after his return there in the fall of 1912. Witness was not in Clallam County at the time the assessment was made for the year 1912, but was just up there on occasional trips. There was a general appreciation of property all over Clallam County in the year 1914, over the year 1912.

Witness says that in tabulating these properties he valued them on the basis of a man owning a piece of property that he would sell, but does not necessarily have to sell, but that he would sell at a price that he has in his mind.

On re-direct examination the witness, Ware, testified substantially as follows:

That his comparative real estate business between the years 1907 to November, 1912 in the city of Seattle and in Clallam County, the far greater was in Clallam County.

"Q. (By Mr. Peters) Mr. Ware, during the time that you were residing in Seattle, in the years 1907 to November 1912, did you have occasion, or did you go to Port Angeles?

A. Occasionally, yes, sir.

Q. How frequently, about?

A. I could not say; some times I went quite often and sometimes I did not go for quite some time.

Q. How many times a month?

A. Oh, I did not go there—I could not tell you; I haven't the slightest idea.

Plaintiff then introduced and read in evidence the written depositions of R. W. Schumacher, S. J. Lutz, Benj. N. Phillips, James P. Christensen, J. A. Adams and William Garlick and it was stipulated between the parties that the tabulated statement of the assessment of the banks for the years 1912 and 1914 was the correct showing of these items.

H. DARWIN produced as a witness on behalf of the plaintiffs, being duly sworn, testified substantially as follows:

He was State Fish Commissioner, with his official residence in Seattle; was formerly employed as a reporter on the Seattle Times, newspaper. He had formerly visited Clallam County for the purpose of writing up the natural resources and development of that country, including the town of Port Angeles and the various other communities. During such visit and while investigating local conditions he conferred with certain of the county officers, among others one and possibly two county commissioners and the county engineer. This was in the year 1912. One of the commissioners was Mr. Hanson, who was present in court. The witness was taken on a drive over a considerable portion of the county with one or two of the county commissioners and the county engineer. They were showing the witness the roads then being constructed. They referred to the standing timber as they drove through it and discussed that feature as related to the development of the county. Mr. Hanson explained to the witness as they drove through the timber the fact that Clallam County was either the first or second in amount of standing timber of any county in the state of Washington. He said that the timber holders' policy over there had been such as to force the smaller settlers out and to make it very hard for them to maintain their holdings. That in times past the cruise of

the timber had been very low; that they had called one re-cruise, possibly more; that a second cruise of the timber was made which showed a much higher stumpage and much greater number of feet of standing timber. That the general policy of the timber holders had been along the lines of getting away with a small amount of taxes, and this on the whole had retarded development of the county, and that by their re-cruise or re-valuation of the timber lands the county had been able to greatly increase its tax roll and in that way they had been able to open new roads. Witness made a memorandum at the time and wrote a story embodying it. Mr. Hanson told the witness that the timber holdings of Clallam County were divided into about six or seven big groups; that the policy of the timber holders had been to shut out the little timber holders, which had been to retard the development of the county, by having their property assessed at very low valuations, and on the whole it had worked detrimental to the county. Mr. Hanson said that he thought the proper policy would be to tax the timber men so high that they would either give up their holdings or put in mills and saw it up into lumber.

"I think the question came up like this: That these holdings had been locked up; that there was no railroad development and that possibly there had been a gentleman's agreement between the railroads that for a certain length of time they would not build into the Olympic Peninsula and that the policy was to save this timber until such time as it would greatly appreciate in value; that is my recollection of how the matter came up; that they locked that up and was letting it stand there."

Q. What was their method?

A. Their methods of circumventing that was to force the cutting of timber, or force its sale.

Q. By what means?

A. The only power they had was taxation.

On cross-examination:

In this conversation Mr. Hanson did not single out the plaintiffs or other timber. His statements

applied to all large timber owners in the county. Mr. Hanson did not express any desire or intention to discriminate between the various large timber holders. The witness would not like to state that Hanson expressed any intention or design to assess the timber or timber land disproportionately or unfairly as compared with other property.

"Here is the position Mr. Hanson took: He took the position that the timber men had been getting a smaller cruise; that they returned their timber at less per thousand than there was actual timber on the land; that they had recruised that, and had thereby increased the number of thousand feet, or whatever it was, to the holders, and it jumped up. I forget now, I haven't read the whole article, but that it jumped from sixty to eighty a thousand, or forty to eighty a thousand, or something like that; but it had largely increased the per thousand to the acre or whatever it was, and that his idea was that they should be—they should also increase their tax rate on that and this would enable them to build railroads and highways and develop their county, and also force the cutting of the timber, or sale of the timber to other parties."

"Q. (Mr. Ewing) The primary object, the purpose, so far as it was disclosed by his conversation with you was to equalize the taxes, wasn't it? Wasn't that the first thing that he had in mind, and wasn't that the impression that the timber owners had not paid their share of the taxes, and that it was his purpose to put the timber owners on some basis so that the taxes would be in proportion to other property in the County?"

A. You keep bringing in mind that he spoke about "other property"

Q He spoke about the taxes of the timber being less than they should be at a fair valuation, didn't he?

A. That is it.

Q. And the only purpose that he expressed to you in his conversation was to bring the taxation of the timber men up to what it ought to be.

MR. PETERS: That is objected to. What his idea of what it ought to be.

A. Nothing more than that?

Q. That was the purpose of the recruise?

A. And by doing this he sought to bring the other propositions about of forcing them to either cut their timber and bring in mills or part with it. That was his idea, what the result would be by this action.

Q. Was there any intimation in anything he said to you of an intent to tax the timber men higher than they equitably should be taxed by the taxing authorities of that county?

A. I would not want to say if there was any such intimation, not higher than he thought they ought to be taxed.

Q. The conversation started primarily on the matter of getting roads, didn't it?

A. We were particularly discussing good roads. You read the article. We were discussing everything.

Q. I got that intimation from the article, that you were discussing good roads?

A. We were discussing industries, good roads, schools, churches and everything that goes into community life.

Q. (Mr. Frost) The intent and purpose of Mr. Hansen's remarks were to indicate a desire for better roads and better conditions, and a little further advance along the highway of civilization, wasn't it?

A. Well I think that is correct, yes sir.

RE-DIRECT EXAMINATION

BY MR. PETERS:

Q. Mr. Darwin as I understand, you wrote up this article a couple of days after you had been to Port Angeles?

A. I said it may have been two or three days or may have been two weeks. My custom was to stay out a week or such gathering data, and then return to my office and prepare it.

Q. Since that time, between that time and the time Dan Earle, the counsel here, spoke to you about

it, and told you he had seen the article and asked whether you would be a witness in the matter, or told you you would be subpoenaed in the matter, you never thought of it from that time to this, did you?

A. I never did.

Q. You did not have the matter called to your attention in the meanwhile did you?

A. I never saw the article. I think I spoke to Mr. Earle about a year ago. He asked me about the date of it, but the article itself I have never seen.

Q. The article was the expression two days after the occurrence of what your belief about the matter was at that time wasn't it?

A. That is correct.

Q. Now in that article, did you not state this: "Hansen favors"—

MR. FROST: We object to that.

MR. PETERS: We have a right to what he gathered from it all. This is his memorandum. It is not a newspaper statement only.

MR. FROST: The witness has read this article for the purpose of refreshing his memory. We object to this. He has a right to testify to any conversation he may have had with Mr. Hansen, but we think that this is improperly offered in evidence.

THE COURT: The objection is overruled.

MR. FROST: Note an exception.

THE COURT: Exception allowed.

MR. EWING: There is this further impropriety about it, that counsel is reading just an excerpt from that article. The Court cannot get the full purport of it unless the witness reads the whole article, which is seven or eight columns long.

THE COURT: The Court is going to be actuated by what the witness says, and not what counsel reads.

MR. PETERS: I would be glad to put it all in if you desire it in.

Q. Mr. Darwin, you said in this article "Hansen favors a policy of taxing the timber holders so high that they will find it unprofitable to long keep their vast tracts off the market"?

A. Yes sir.

Q. That was the truth as you then understood it and remembered it, two days after the occurrence, was it?

A. Yes sir.

Q. (MR. RIDDELL) That was your construction that you put on the conversation that you had with Mr. Hansen?

A. That is correct sir.

MR. FROST: Mr. Darwin isn't it rather permissible for a newspaper reporter in writing an article of this kind to exercise his imagination slightly in order to make the article a little more readable?

A. Well, in that kind of an article I do not know that it is called on for any play in the imagination. I do not think he wants to exercise his imagination. He might try to exercise his ingenuity in the construction of the phrases, but not necessarily his imagination in writing a news article like that.

Archibald J. Fiskén, a witness produced by the plaintiffs, being sworn, testified substantially as follows:

Has resided in the city of Seattle for 31 years; is engaged in the business of mortgage loans, insurance, appraising property for purposes of loans or insurance; has been engaged in this work since 1902; went to Port Angeles recently and appraised the improvements on Lot 9, Block 1 of Tidelands West of Laurel Street. On the corner there is a two story, part basement concrete building. It is what is termed a store and office building. The first floor is occupied as a retail store and the second floor is divided into offices. In addition to this concrete building there is a row of frame buildings directly north of the concrete building and north of that there is a corrugated iron building. "I should say the value of the improvements would be \$21,800." That property is known as the Morse block. Taking the present valuation at the figures of \$21,800, and allowing for the usual depreciation, the value on March 1, 1912, would be \$22,000.

The witness also appraised Lot 10, Block 16 of

the townsite, the Norman R. Smith subdivision and appraised the value of the improvements on March 1, 1914, on that lot, as \$20,500. The value of the improvements on March 1, 1912, would be \$20,600. This is known as the Aldwell block. It is a two story and basement mercantile building built of stone and a small frame building in the rear.

On cross examination the witness says that he did not examine the newly constructed buildings. Witness says that in appraising the buildings he took into consideration the class of buildings, material, size and occupancy, adaptability to the location and the condition in the interior and exterior. The witness endeavored to show the replacement value of these buildings less depreciation. He made the appraisal for the purposes of this suit and for that alone. The witness does not know what any of the buildings which he has valued would sell at.

With reference to the valuation of the Morse Building on the corner of Front and Laurel Streets, the valuation included all the buildings on the lots. The concrete building itself, the witness had valued at \$18,000.

THOMAS J. ALDWELL, a witness on behalf of the plaintiffs, being duly sworn, testified substantially as follows:

That he has been a citizen of Port Angeles about 25 years, engaged in the real estate and insurance business and is Vice President and General Manager of the Olympic Power Company, an institution for generating electricity to serve the peninsula.

Plaintiffs produced a photographic copy of the appraisal of certain properties in Port Angeles, signed by the witness and others, and introduced it as Plaintiffs' Exhibit E. The witness admits that it is a true copy of the original paper, and that he has searched diligently for the original and been unable to find it. Witness admits that he made the statement and that the signatures to the original are genuine and that the witness may have sent it by letter or by hand

to a man by the name of Grasty sometime in May, 1914. This he probably did. Grasty was in Port Angeles at that time for the purpose of giving some money to build the Elks Building. The witness discussed values with Mr. Grasty and he would not deny that he had given him this paper.

Asked as to whether this was not the witness' best judgment as to the value of these properties at the time, he says that the statement was made up for the sale of a ten year bond and it was an optimistic statement. It was to go over a period of ten years. Lewis & Wiley had obtained a contract for filling in certain tide lands and this was to help sell the bonds, that they were to issue upon the tide lands.

"Q. And this representation was made at that time of your belief of the fair value of these lands to be given these people who were to buy the bonds? Is that not a fact?"

A. Well, as I say, it was given in an optimistic vein and some of the signers objected to signing it. I believed that the property would be worth it and that nobody would be hurt by it. In response to subpoena, witness produces a statement; says there was a detailed statement made out but that the detailed statement was never used. Witness is shown a paper, which was afterwards identified as Plaintiffs' Exhibit "E", and he said they never used that one; that there was some objection to it on the part of the signers and they reduced it three hundred thousand dollars; he thought Exhibit "E" was recalled; Lewis, Wiley & Morse did not have one and witness does not have one; the witness made up the statement and got the men to sign it whose names are on it; it was not an appraisal committee; it was based on one or two sales that might have been made; it was an optimistic statement; the witness knew the property would pay the bonds and the valuations would be around there and there had been one or two sales of property on which he could base this and it was given out for the purpose of selling those bonds.

And the witness gave it to Lewis & Wiley.

Upon the offer of this Exhibit E in evidence by the plaintiffs, the defendants objected, whereupon an argument followed, and defendants cross examined the witness, as to the admissibility of this paper, he testifying substantially as follows:

That prior to the time of his making this statement an investigation had been made by the bonding house of people in Port Angeles and various officers had been written to with reference to the values of these properties, and upon the values which they obtained in this manner objections were made to taking the bonds, and the bonding house had sent a man down to make their own investigation. Thereupon Lewis, Wiley & Morse, the contractors, appealed to the witness to get a statement from the witness and other signers of this statement Exhibit E, for the purpose of selling the bonds.

The Court thereupon held that the plaintiffs might examine the witness upon his own statements as they appeared upon this Exhibit E and thereupon the defendants admitted the competency of the witness Aldwell, as a real estate expert.

The witness' attention being referred to this Exhibit E and asked as to the value of Lot 1, Block 1, Tidelands east of Laurel Street, says:

"I would like to be informed if I am to testify of my value my idea of it now, or what I might have had at that time. The conditions have changed so that my testimony as given now would not be 40 per cent of what it was at that time. Looking back at it now it would be completely different to what it might have been had I given it at that time, because I could not see that the boom was just a bubble and did not last. If I would give my present opinion of the values it would not be what it would have been had I signed the document at that time. It would not be anywhere near it."

"Q. What in your judgment was the fair market value of this lot that I refer to in February, 1914?

A. As I would have looked at it then or now?

MR. PETERS: Q. I am asking you to tell me

what, in your judgment as a real estate man of twenty years experience, was the value, the fair market value of that property on February 1st, 1914?"

The witness then gives his values of lots in this list, Exhibit E as follows:

Lot 1, Block 1, Tidelands west of Laurel St., as of February 1, 1914, \$12,000 to \$14,000.

Lot 2, \$10,000.

Lots 3, 4, 5, 6, 7, 8 and 9, about \$8000 each.

Lot 10, about \$11,000.

Lot 1, east of Laurel St., \$8500.

Lot 2, \$7000.

Lots 3, 4 and 5 would be worth about \$7000 apiece

Lot 6, \$7500.

Lot 7, \$7500.

Lot 8, about \$9000.

Lot 9, about \$13,000 to \$14,000.

In Block 2, east of Laurel St., Lot 6, \$1500 to \$2000.

Lot 7, \$2000 to \$2500.

Lot 8, \$2500 to \$3000.

Lot 9, \$6000 to \$6500.

Block 14 of the townsite of Port Angeles, Lot 1, \$6000.

"A. Those lots—I would like to get it clear, Mr. Peters, in my mind. Am I testifying to what they would have sold for at the time if a lot were sold, or as I look at it now and see the value. I want to get it clear in my mind. In the town of Port Angeles now it is very hard to get a valuation and what to base a valuation on, and I want to get it clear, because I do not want to mislead any person.

Q. (Mr. Peters) My impression is that this is the interpretation I put upon it; you are answering what was the value in your mind of the market in Port Angeles in February of 1914; not what you look back at it now, what it may have been sold for or may not, but what a market buyer in Port Angeles in February of 1914 would have considered it worth.

A. That is rather hard, because we would get a buyer and we would sell him one lot and would I

base my value on what I would sell that for or on what you could sell another lot for? I want to know what I will base it on.

Q. I am asking you what those lots would have reasonably sold for as the market stood under the conditions existing in February of 1914.

THE COURT: Give him a definition of what is the market value. That may assist him.

Q. (Mr. Peters) The market value of property of this character would be the price at which property would be sold at the time referred to, February 1st of 1914, where the seller was willing to sell, but did not have to sell and the buyer was willing to buy but did not have to buy, was able to buy.

MR. EWING: Another test in the language of the statute, that price at which the property would be taken by a creditor from a solvent debtor in the payment of a debt.

A. I want to get it clear. I do not want any person to think I am a poker dealer in Port Angeles. We have these little booms and we sell a lot and dupe some person, and there are so many sold, and whether we could sell any more or not, that is a question; and before I go over all this business I want it clear in my mind; I want to see what I am testifying to. (Discussion between counsel.)

A. I could base it on what I bought property at or what I sold property at. I sold a few lots at a fair value and I bought some at a good deal cheaper value. I am under oath and I am in a very peculiar position. I want to give exactly what I believe to be the true value, and it is hard for me to determine in my mind.

Q. (Mr. Peters) I take it, that the value, the market value would not be made up of what you made a sale for or that you took property for; but upon what, in a number of sales, constituted a market at that time. So, if I would come to you in February of 1914 and asked you what such a lot was worth you would tell me from the existing market as of that day what it was.

A. I will say, in response to that, that we had

a movement from September to about somewhere between January and February, and since then you could not sell property at anywhere near the value.

Q. I want to take the valuation that was put upon that at the time of the movement, if that movement lasted beyond February, and it did, didn't it?

A. It lasted somewhere between September and January and February.

Q. And those values were made up of the market as it existed in February?

A. Well, as I say, these figures were made on an optimistic vein.

Q. But they were based in your judgment on the market value of property at the time, were they not?

A. You could have sold two or three lots at that time; but, in Port Angeles, you could sell two or three lots and you could not sell another lot if you sold at a quarter of the price. It is very hard for me to get a basis on which to give valuations in a town like Port Angeles. (Discussion between counsel.)

A. As I understand it, I am testifying to what the value would be at that time under the conditions then existing.

Q. Exactly."

Lot 2, \$3000 to \$3500.

Lot 3, \$2500 to \$3000.

Lot 4, \$2500.

Lot 5, \$2500.

Lots 16, 17 and 18, Block 14, \$4500 to \$5000 each.

Lot 19, \$7000.

Lot 20, \$9000.

The witness is handed a letter dated April 29, written to Mr. Grasty and a letter of May 15, 1914, also written to Mr. Grasty, the genuineness of which he admits. These letters were admitted in evidence as Plaintiffs' Exhibits F and G over the objection of the defendants on the ground that they are hearsay and are not admissible until the witness has been connected up with the conspiracy, or an offer on the part of the plaintiffs so to connect him up is made by the

Court. Exception was taken and allowed to the ruling of the Court.

The witness is then asked the following question by the plaintiffs' counsel:

"In this letter to Mr. Grasty of April 29th, 1914, Exhibit E you said to him "I am enclosing you a list of the valuations gotten up and certified to by both our banks and several other prominent citizens as being a fairly conservative valuation of the property in our business district. A Committee was appointed and a list of values made for the purpose of getting as near as could be the actual valuation of the property in this district, and the necessity for this was occasioned to a considerable extent by the fact that the assessed valuation on this property was so low that it was considered that it might work a hardship on the city in disposing of the improvement bonds. The assessed valuations in this city have been kept down as low as possible." It says here "Law as possible." I presume that is a clerical error?

"A. Yes sir, it should be low.

Q. (Continuing) "As low as possible for two reasons: first to stop any too excessive improvement, and secondly: to save the extra proportion which we would have to pay, of the state and county taxes. The assessed valuation will be materially increased this year.

I am giving you this information as after thinking over our former conversation, I think it will be most interesting to you to know the real facts. In this connection, I might say that these improvement bonds amounted to about two hundred thousand dollars and were slightly in excess of the assessed valuation, but the bond buyers carefully looked into the values of the property back of the bonds, and after a thorough investigation, the Asset Financing Company purchased these bonds for ninety-six cents. Peabody Houghteling made an offer of ninety-five cents, and probably would have given better, but the other people had secured the purchase. I understand that they have since resold these bonds at a fair profit." * * *

"During the past two or three years, the values

of the property in this city and vicinity have increased considerably, but there has been a substantial reason for the increase. One reason being that the Olympic Power Company have installed a hydro-electric plant, at a cost of one million three hundred and fifty thousand dollars. With turbines and generators capable of a capacity of eight thousand net electrical horse power. In this connection I am enclosing you a circular of Peabody-Houghteling & Company, describing the bond issue which they took on this plant, which gives a further description of it.

The Puget Sound Mills & Timber Company have just completed the construction of a mill which will cut four hundred thousand feet of lumber per day. The insurance surveyors who have just examined it, say that it is the best equipped mill on the Coast. This mill alone will give employment to about eight hundred men directly and indirectly. Besides this mill which has just been completed the Merrill & Ring people, who are large lumbermen, and the Lacy people, who also have large holdings, are starting in to log their timber, and are seriously considering establishing mills at Port Angeles."

MR. PETERS: Gentlemen, I will mark the parts of this letter which I read. I do not think what I omit has any bearing on the matter, which I wish to refresh his recollection on, but it is at your convenience at any time. I mark with a pencil what I read.

You further say: "Our citizens here also, I might add, donated a greater portion of the Puget Sound mill site, raising locally, thirty-five thousand dollars for this purpose, which makes one hundred and twenty thousand dollars as a bonus which our young city raised, inside of two months. When this railroad is completed to its eastern destination, which will be at first by way of ferrying to Seattle by either Oak Bay or Port Ludlow, and when completed it will help vastly in the development of our county."

You previously stated, to recall your recollection to this, you previously stated in the upper portion of that letter that eighty-five thousand dollars bonus was

raised for the Milwaukee, making a total of one hundred and twenty-Thousand.

Now I read you your letter of the 15th of May, 1914, as follows, directed to Mr. Grasty at Portland.

"Dear Mr. Grasty: I am in receipt of your letter forwarded here from Seattle, and am here for a day or two. I have not the date of the property valuations here but will send them to you on my return to Angeles. They do not cover any improvement, but are based on the value of the ground alone. Lot 10, block 16, for instance, where the stone building is, is worth fifty thousand dollars; and the value on the list is away under that. I note what you say about the appraisal and I hope you may be successful, in getting the loan, as it is as good as a U. S. gold bond. The repayment being as certain. If there is anything I can do, address a duplicate letter to the Arctic Club, Seattle and one to Angeles. I leave here tomorrow. Yours very truly, Thomas J. Aldwell."

Refreshing your recollection with these statements made of April 29th and of May 15th, 1914, I will ask whether you desire to qualify your testimony at all that you gave with reference to that list of property, as to whether that was a conservative valuation that you placed upon the property, or, as you stated yesterday, before these letters had been called to your attention, whether it was an optimistic value.

A. It was an optimistic value.

Q. Having read this here, that statement here that the lots in the list are way undervalued, or to be absolutely accurate I will read what you say "and the value on the list is way under that"; what did you mean by that statement, that "the value on the list was way under that"?

A. What I presume I meant from the wording of the letter was that the list was valued under what I stated there.

Q. Yes sir; in your views in May 15, 1914, the values were still as high as they were in February, 1914?

A. That was not my view. I wrote that letter

to get a loan for the Elks. That was an optimistic letter.

Q. That was an optimistic letter?

A. Yes sir.

Q. But it was your judgment at that time and your belief that the stone building that you referred to,—that was your building was it not?

A. Yes sir.

Q. That was the building that was testified to by Mr. Fiskén yesterday. Were you in the court room then?

A. I was not in the court room, no.

Q. It is what is known as the Aldwell Building is it not?

A. Yes sir.

Q. When was that built?

A. That was completed in 1906, I think.

Q. And it was substantially the same shape in March, 1912, as it was at the time when this letter was written?

A. No sir, no sir. That building, the foundation all went out under it and I had to put,—I have had to put irons all through the building to hold it together.

Q. That is what I wanted to find out, when was that done?

A. That was done shortly after it was built.

Q. When was that?

A. That was about 1908, I think.

Q. But what I mean is, the building was substantially in the same shape in 1912, 1913 and 1914 as it was at the time you wrote this letter?

A. Yes sir, it was.

Q. And at that time you valued your property at fifty thousand dollars?

A. No sir, I did not. I said so in the letter, but I did not.

Q. You said so in the letter, but you did not?

A. Yes sir.

Q. But you did not value it at that?

A. No sir.

Q. What do you recall as to the circumstances now and the market value as it existed at that time in May, when you wrote this letter, what do you think was the fair market value of your building?

A. I sold that building and another building.—

Q. I am asking you what you think was the market value of it at that time; not what you may have sold it for subsequently.

A. What date was that?

Q. That was in May, 1914, or take it, in March, 1st, 1914.

A. I sold it before that.

Q. You had already sold it?

A. Yes I had already sold it.

Q. How long before that had you sold it?

A. Just shortly before that.

Q. Had you sold it before the assessment of March, 1912?

A. No, not before the assessment of 1912.

Q. I mean 1914, had you sold it before that assessment?

A. Yes sir.

Q. Before we leave this letter and return to the list, you state here that the Olympic Power Company had installed a hydro-electric plant at a cost of \$1,350,000 with turbines and generators of a capacity of eight thousand net electrical horsepower." When was that completed?

A. Which?

Q. The hydro-electric plant of the Olympic Power Company.

A. That was completed in the fall of 1914. The plant—a blow-out occurred as I recall it, about October 30, 1912, and we made a blast in November 4th, 1913, and then we completed the work. We discharged the engineer, and completed the fill of the dam some time in the latter part of 1914.

Q. In what stage of completion was it in March, 1914?

A. We were generating power.

Q. It was substantially completed, but you were

running it along to the fall sometime trying it out before you discharged the engineer?

A. No sir; we were making our fill of the dam. We were completing the filling of the dam.

Q. And this valuation that you placed in here, in May, of one million three hundred and fifty thousand dollars was substantially correct, was it not?

A. Well, I should think about probably four or five hundred thousand dollars of that was in the blow-out, occasioned by the blow-out. We had a blow-out under the dam.

Q. Not after that date?

A. No, no. I say that is what it cost.

Q. That is what you had to do to duplicate your work?

A. Yes sir.

Q. So that you would take off that for a new construction or replacement of a similar plant probably four to five hundred thousand dollars?

A. Yes sir.

Q. Which would reduce your estimate from one million three hundred and fifty thousand to eight hundred thousand?

A. Yes sir.

Q. That would be a fair estimate in your judgment of the value on that date, in March, 1914?

A. Well it is pretty hard to arrive at what would be a fair estimate, because a client—it depends on how you arrive at the conclusion, or whether you arrive at what it was paying or what it cost.

Q. It cost you that?

A. Yes sir, with the engineering and everything it cost approximately \$650,000 somewhere around that.

Q. Plus this duplication expense that you had to go to by reason of this blow-out?

A. Yes sir; it probably cost more than that. I have never figured out just what the blow-out did occasion us. It set us back for a year.

Q. How long had you been in operation and furnishing power?

A. We turned on the power in January, 1914—

December, 1913 and January, 1914, as I recall it.

Q. Not to go into detail at all, but will you just state to the court what district is covered generally and was at that time by your plant as to service, how far away from Port Angeles?

A. We went to Bremerton.

Q. The Navy Yard over here?

A. Yes sir. I might say with interest and everything our plant cost even more than that.

Q. There wasn't any large expenditure in connection with that plant from that time through the year 1914, was there?

A. No, not very large, except until 1914. It was not sure that our dam was sealed. The dam was uncompleted and in October, 1914 we completed sealing the dam.

Q. And that you have taken into contemplation in the five hundred thousand dollars which you allowed?

A. I would not say it was. I have never checked over, just checked over what that did cost us.

Q. You are an officer of that company?

A. Yes sir.

Q. What officer?

A. Vice President and general manager.

Q. And you were such at that time?

A. Yes sir.

Q. During this entire construction?

A. Yes sir.

Q. You are thoroughly familiar with its holdings and the values, cost and so forth?

A. Yes sir; but as I say, at that time the dam not being completed or sealed we did not know whether we had a completed plant or not.

Q. I show you a statement made by you to the Public Service Commission for the year ending December 31st, 1914, in connection with that plant; will you refresh your recollection with reference to the items of that?

A. That is our report, yes sir.

Q. That is your report?

A. Yes sir.

Q. That is made under oath, is it?

A. Yes sir.

MR. PETERS: That would be identified as proposed Exhibit H. (handing exhibit to counsel for defendant.)

MR. FROST: If Your Honor please this is a report made to the Public Service Commission of the State of Washington, for the year ending December 31st, 1914, and is subscribed and sworn to on the first day of March, 1915. There is nothing in dispute before this court.

THE COURT: I do not understand that it is offered in evidence. He submitted it to the witness to refresh his recollection. That was the beginning of the question.

MR. PETERS: That is all the intent of it at this time.

MR. FROST: All right.

Q. (Mr. Peters) Your transmission lines as I understand you to say were all in by March 1st, 1914 and you were transmitting power then?

A. Yes sir.

Q. Referring to the item here under the head of Assets Tangible, land used in the operation of property you have listed here at \$1,530,517.34.

A. Yes sir, listed as what?

Q. Land used in the operation of property, \$1,530,517.34.

A. Yes sir.

Q. Buildings and fixtures \$506,742.?

A. Yes sir.

Q. Was that a fair estimate in your judgment that you made.

A. Well we were apportioning the losses that we had over everything.

Q. But that was your fair judgment in representing to the Public Service Commission the cost of that property?

A. That was the way we had to absorb the promotion, stock and everything in that way.

Q. You absorbed the promotion stock?

A. Yes sir.

Q. But you say here, what the Tangible Assets were, that the lands used in the operation of the property was \$1,530,517.

A. When we formed the company we sold the right and everything to the company for I think a million in stock.

Q. How much of that land was outside of Clallam County?

A. That land is practically all in Clallam County. I may say that land is really no different to the land that they assessed at twenty or thirty dollars an acre. Of course it is the power site. It is what a person would consider a power site.

Q. It is assessed, as I understand you, for the years 1912, 1913 and 1914, at thirty dollars an acre?

A. Somewhere around there.

Q. In order to identify that in a list will you state where this land is located, your plant?

A. That land is in sections 15, 21, 22 and 28, township 30, range 7.

Q. The hydraulic power plant equipment you give at \$245,562.88; the transmission system lines you give the valuation of \$261,335.56; the distribution lines at \$16,720; transformers \$2,814, a total cost of plant and equipment you give at \$3,415,526.94 was that shown on your books, the books of the power company?

A. Yes sir.

Q. These are the values at which the property was carried on your books?

A. Yes sir.

Q. Did the assessor of Clallam County in getting the assessments for 1914 ever have access to your books?

A. No sir.

Q. Did he ever ask you to see them?

A. No sir.

Q. Did he ever ask you for an assessment list?

A. Yes sir.

Q. Having refreshed your recollection with this statement Mr. Aldwell, I will ask you what in your judgment was the cost, value at the time, March, 1915, of the property that you referred to in this letter of yours, April 29th, 1914, as being March 1, 1914, what was the cost value at that time of this property which you referred to in your letter as being worth \$1,300,000.

MR. EWING: That is objected to because the cost is not the test. The cost has nothing to do with it. It is the reasonable market value.

THE COURT: Objection overruled.

MR. EWING: Note an exception.

THE COURT: Exception allowed. It may not be the controlling test, but it throws some light on the question of value.

Q. Will you state, having refreshed your recollection with the statement made to the Public Service Commission for that year, was that estimate of \$1,334,000 not a fair statement of the cost as of March, 1914, of that plant?

A. It was including interest. All the money that we had expended, if we paid interest, with all the money expended it was low.

Q. In that letter you refer there to the plant—in this letter of April, 1914, you refer here to a plant of the Puget Sound Mills & Timber Company in which you say the Puget Sound Mills & Timber Company have just completed the construction of a mill which will cut four hundred thousand feet of lumber per day. The insurance surveyors who have just examined it, state that it is the best equipped mill on the Coast. This mill alone will give employment to about eight hundred men directly and indirectly. That is your opinion as to the Michael Earles property?

A. Yes sir.

Q. When was that completed with respect to March, 1914?

A. I could not recall when that was completed.

Q. About when?

A. I could not say. I think it was somewhere

around that time; but you can get competent evidence on that and I may be mistaken on it.

Q. If you direct anyone—

A. If I said it in that letter I presume it was.

Q. What I want to get at—

A. If I said it in that letter I presume it was, but I would not be certain.

Q. You stated it was just completed April 29, 1914.

A. Yes sir.

Q. Wouldn't it be your judgment it was completed by March 1st, 1914?

A. If I have it there.

Q. And you say it will cut four hundred thousand feet a day?

A. Yes sir.

Q. You are more or less familiar with that plant?

A. Yes sir, I have been through it several times.

Q. Been through it a great many times?

MR. RIDELL: Several times he said.

A. I have been through it several times.

Q. (Mr. Peters) You have been through it several times?

A. Yes sir.

Q. What would you say was the cost of that mill that cut four hundred thousand feet a day?

A. I do not know; I never had a mill built or had anything to do with it.

Q. Any idea of the value of that mill at that time?

A. No sir, I would not say. I would not be competent to judge of the value of the mill.

Q. You say here that "our citizens here, I might add, donated a great portion of the Puget Sound Mill site, raising locally thirty-five thousand dollars for this purpose. Did you contribute to that?"

A. Yes sir.

Q. Do you know yourself whether they purchased the land at thirty-five thousand dollars and gave it to the Michael Earles people, the land for the site?

A. They give them thirty-five thousand dollars, but I do not think it was all paid. I think a great quantity was not paid.

Q. And they gave them that in land?

A. They raised thirty-five thousand dollars. I never called them up. I know I paid mine. I understand a great number did not pay their part.

Q. Was that for land?

A. Yes sir.

THE COURT: Was it thirty-five thousand in land or thirty-five thousand in money?

A. We raised thirty-five thousand to buy the site; how much of that was paid I do not know.

Q. (MR. RIDELL) Who was the money paid to?

A. It was a subscription, the Commercial Club Committee.

Q. Was the land acquired by Michael Earles or the company?

A. Mr. Earles got the land, whatever it cost; what it cost I do not know.

MR. FROST: We object to this on the ground that it is immaterial and irrelevant. It is encumbering the record with a lot of immaterial matter that this witness is not competent to testify on.

THE COURT: It may be material. It is hard to tell whether it is material or not until the whole matter is developed. The objection is overruled. Exception allowed.

Q. Do you know what land was occupied by the Michael Earles plant in March of 1914?

A. I could show you on the map.

Q. If you would give us the description because I want to compare that.

A. I would say mine is not competent evidence; that is the best of my knowledge.

MR. RIDDELL: Do you know where it is?

A. I know about where it is.

MR. EWING: The Port Angeles map is not here.

MR. PETERS: Well we will wait until it comes.

EXAMINATION BY MR. EARLE

Q. Mr. Aldwell, will you indicate more definitely just the description on which your plant is located, in what forty?

A. It is located in Section 15, township 30, range 7, I think in the north half.

Q. Was the plant excluded, your dam and backwater excluded excluding the backwater, does the plant cover more than forty acres?

A. Well, the plant would not; but I could not tell just exactly what forty it is on. But is somewhere in the middle of section 15, township 30, range 7; somewhere in the middle of the northwest quarter.

Q. You think it is in the northwest quarter? Is the southwest quarter of the northeast quarter of section 16, township 30 range 7 the forty on which the plant is located?

A. It may be.

Q. You are not sure as to that?

A. I have never looked it up in recent years what forty it was on. I think it is, I would not swear.

Q. As far as you know it is on the southwest of the northeast?

A. If you looked up I will admit that.

(MR. RIDDELL) He has not looked it up and does not know any more about it than you do.

A. If you looked it up I will admit it. I would not swear what forty it is on.

Q. Is it the only forty acres in Section 15, township 30, range 7, on which you have improvements?

A. Yes sir, I should think so. We have a dwelling, perhaps on another, but I think that would be the only one. Since we started the construction I would not swear what forty it was. I never looked it up.

EXAMINATION BY MR. PETERS

Q. Mr. Aldwell, I overlooked a question. I overlooked questioning you about this. You handed me yesterday, in response to a subpoena requesting you to bring forward the paper, this paper which I will have marked plaintiff's Exhibit I for identification, and this yellow sheet, which is plaintiff's Exhibit J

for identification. This one which I refer to is Exhibit I for identification, which reads as follows:

MR. RIDDELL: We object to encumbering the record with that. Counsel cross examined the witness about that to his heart's content yesterday and the court ruled on it. There is no necessity to go into the matter again.

THE COURT: Objection overruled. Exception allowed.

Q. Mr. Peters) Reading. "We the undersigned residents and property owners of Port Angeles, Washington, being conversant and familiar with the values of property in Port Angeles, hereby certify that we have carefully appraised all the property shown on the blueprint which is attached to this certificate and made a part hereof, that we have divided the property into four districts, being numbered 1, 2, 3, 4, as shown on said blueprint, and that to the very best of our judgment and belief, the true and actual total value of each district is as follows, to wit:

District No. 1 \$761,700; district No. 2 \$178,750; district No. 3 \$342,700; district No. 4, \$71,700. Total value \$1,354,850."

And attached to that list, besides your own, was the name of—

MR. FROST: We now object to that.

THE COURT: The other names do not matter.

Q. (Mr. Peters) Is that list a comprehensive statement of the list of properties that are shown in detail on this photographic list?

A. As I recall it, only I said, as I remember this, about \$300,000 less valuation.

Q. Less than that valuation?

A. I think less than that total, as I recall it. I think so. I have never totaled that up since we got it out. I don't know as I recall it. If you people check it up I will admit that check, but I haven't checked it up since I made it out, and it passed from my memory. Before I answer that I would like to check it up.

Q. I was simply trying to identify the list.

A. Yes sir; generally speaking it is.

Q. November 28, 1914, you wrote to Lewis, Wiley & Morse, Central Building, Seattle, Washington as follows:

“Replying to your favor of recent date, requesting appraisalment of the following property:

Lots 3 to 10, Block 2 Tidelands west of Laurel Street.

Lots 1 to 10, block 3 tidelands west of Laurel Street.

Lots 1 to 5, Block 12 tidelands west of Laurel Street.

Lots 16 to 20, block 12, tidelands west of Laurel Street.

Lots 1 to 20, block 13, tidelands west of Laurel Street.

Lots 3 to 10 and lots 11 to 15, block 14, tidelands west of Laurel Street, all in townsite of Port Angeles, comprising in all 61 lots; will say that I have gone over the several pieces of property comprising this list, and will state that a very conservative value on this property at this time would be eighty thousand dollars.

This property is future business property and the value will be increased by the contemplated improvements.

(Signed) Yours very truly,
Vice President & General Manager”

What was that?

A. The Olympic Power Company. I was selling them power at the time and I presume I wrote it on that letterhead.

Q. Is that property referred to in this photographic list?

A. No sir.

Q. This is additional property?

A. This is additional property.

Q. Where is that property situated?

A. That property is that that Jack Woods had an option on; that is east—

Q. You will identify that on the map when it comes?

A. Yes sir.

Q. Whereabouts in the city of Port Angeles was that property situated with respect to the property we were talking about yesterday?

A. That is west of the property.

Q. How far west?

A. Adjoining it on the west.

Q. Is it in the central business portion of the town?

A. No.

Q. It is a little off?

A. Yes sir.

Q. That was made in November, 1914?

A. Yes sir.

Q. Some six months after the other letters?

A. Yes sir.

Q. To refresh your recollection then from that valuation and estimates made at that time, what would you say as to that being a fair, reasonable value as of March, 1914 of these lands mentioned on the yellow sheet?

A. Well I think that would be somewhat near it; but it would be a little high. As I say, in places the valuations that I placed on those was what I had sold a lot or two here and there for.

Q. That was your impression 'at the time of the market value, was it not?

A. But if it came to the matter as you defined it yesterday, it would make it hard to really arrive at a conclusion because you can't sell a great many lots.

Q. But that was your best judgment at that time as you stated to Lewis & Wiley of the market value of that property, was it not?

A. Yes sir; you could sell one or two lots for those figures at that time.

Q. You were trying to advise them as to what was the present fair, market value of that property in November, were you not?

A. Well, it was slightly optimistic, but that was the idea.

Q. And that was what you gave them?

A. Yes sir.

Q. Taking that into consideration, this flurry that you referred to, had not yet ceased, had it?

A. Well, I will say regarding that, that I have always had the idea that when we got a railroad that that would increase the values of property materially, and the last time I thought it would; but since then I find that it has not worked out as I thought it would. For years I have always thought if we got a railroad it would increase the value materially.

Q. And that was the general view of the public at Port Angeles at that time, wasn't it?

A. I do not know as it was. That was my idea.

Q. Mr. Aldwell, referring to block 15 of the townsite of port Angeles, you put on that in this estimate, this photographic copy that we have here an estimate of eighteen thousand dollars.

A. What lot was that?

Q. That was lot 1, block 15 of the townsite of Port Angeles. You put a valuation of eighteen thousand dollars on that; what was the value in your judgment?

MR. EWING: Do you desire the testimony that you gave yesterday with reference to the valuations that Mr. Peters asked you about to stand as your honest judgment now?

MR. PETERS: I do not think the witness can choose what is going to stand and what is not.

THE COURT: You will have a chance to cross examine him later.

MR. EWING: The witness explained that his testimony given yesterday was under a misapprehension as to time, and I thought the time to correct the error that he made yesterday was now, rather than to let it stand and proceed with the examination.

THE COURT: If the witness wants to make any explanation, he may do so.

THE WITNESS: I will say that in the material part of it I will let it stand. I have raised one or two lots and lowered one or two lots, but materially it will stand.

MR. PETERS: That is the way I took it, to be your best judgment.

A. Yes sir; I will say I made out a tabulated list of what I considered the value. If you want to look at it.

MR. EWING: That is what I suggested yesterday.

Q. (Mr. Peters) Where did you make up the list?

A. At the Arctic Club.

Q. Has anybody else seen the list?

A. No sir.

Q. (Mr. Ewing) Does the list include the properties which you testified to yesterday as well?

A. Yes sir.

Q. So that it will be complete?

A. So that it will be complete, so far as I know them.

Q. (Mr. Frost) As of what date did you fix your estimate of the value?

A. The valuation I put on them was, as near as I could arrive at it from the sales and purchases that were made and what would be the fair value, what you could sell a few lots for,—but when you come down to value Port Angeles property it is awfully hard, because when you sell a few lots nobody else will buy another.

MR. PETERS: We object to that cross examination now.

THE COURT: Counsel is trying to fix the date.

THE WITNESS: March of 1914, the date that you asked me.

MR. FROST: If these lists be submitted, with the testimony of this witness, the county assessor, and with the county assessment rolls, as in the court house, and we will permit the county assessor to place the assessed value of that property upon that list. We will get a correct list that will simplify matters.

Mr. Peters: I want to check this to see if it covers this particular district that we have taken as a sample.

MR. PETERS (examining list): May it please

Your Honor I find it is going to take us a long time to check this list that the witness has handed me here and that we cannot do it without an expenditure of time, unnecessary time, and I propose to turn this witness over for cross examination at this time with the right to take up this list further after we have had a chance to check it at the noon hour. Is there any objection on the part of counsel?

MR. FROST: No.

MR. PETERS: Will you take him and fill in. We will take it up after we examine this. I do not know whether Mr. Ware's testimony will cover all this or not.

Before turning the witness over, I wish to offer in evidence in connection with his testimony this plaintiff's Exhibit H which is the report to the Public Service Commission.

THE COURT: It may be admitted.

Plaintiff's Exhibit H received in evidence.

MR. PETERS: I desire to offer this photographic list and these letters on this basis, the two letters G and H, on this ground. Your Honor yesterday ruled that they were not competent at that time; but I call your Honor's attention to the rule of practice in instances of this kind, taking it from Cyc and I do not think there is any question about the rule. The question is as to the discretion and application. They say, "Where it has been charged in our bill that the east end of this county was opposed to the timber interest which kept the east end, that the politics of the county were entirely controlled by this city of Port Angeles, that the citizens of Port Angeles owned and those who controlled the votes owned property in the town of Port Angeles, that they were all legislating and plotting for the benefit of Port Angeles as against the non-resident holders, such as these timber plaintiffs have shown themselves to be in this case, and this comes within the rule of the conspiracy on the part of the people generally in the east end of the county and of the city to accomplish an unfair assessment of their property in their favor

as against those of the western part of the country'' and we will endeavor to couple this up, if your Honor pleases, by showing actual fraud, actual intent, actual practice, a confession of actual practice on the part of the assessing officers who are elected by the votes of citizens largely of this community of which this witness had been a resident and a marked one for twenty years.

MR. RIDDELL: The trouble with counsel's authority is this: Your Honor asked counsel yesterday whether he intended to include this witness as one of the conspirators, and counsel was not willing to make the statement to the court at that time, and counsel's statement at the present time, in making this offer has carefully framed it so as to avoid making the statement to the court that he would later couple this witness up as one of the conspirators. It is a very familiar rule of conspiracy with which counsel and the court are thoroughly familiar, that before testimony, or before acts or declarations of a conspiracy can be introduced in evidence, the conspiracy must first be shown. I think it would be within the discretion of the court, if counsel will say to the court and if counsel will state now, that he will connect this witness up as a portion of the conspiracy—I think the testimony pursuant to the conspiracy would be permitted under the general rule; but as counsel is unwilling to accept that burden, and yet makes this offer to attempt to get the benefit of it, we think that the testimony is just as objectionable now as hearsay evidence as it was at that time.

MR. PETERS: I am not unwilling to accept the burden at all.

THE COURT: I am inclined to think there is grave doubt about its admissibility. A case that is tried to the court, that is very liable to be appealed, it is better to make a mistake in admitting too much, so the appellate court can disregard it if it thinks it is objectionable, than to admit too little and then have the appellate court finally set aside and send it back to be tried all over again. I overrule the objection and admit it. I am inclined to think myself I would disre-

gard it. I think the opinion of the witness made at this time on oath is better than representations made for the sale of bonds and building buildings and the like.

MR. RIDDELL: Let the record show that we object to it on the ground that it is hearsay and on the ground that it is not admissible until the witness has either been connected up with his portion of the conspiracy or offer to so connect him up, is made.

MR. FROST: And there has been no identification of the signatures of the numerous names that are appended to this instrument and no opportunity for the cross examination of them.

THE COURT: He did identify the signatures; that is, he identified them as the signatures of those men purporting to sign.

MR. FROST: The witness was not qualified in any way.

THE COURT: So far, it does not make it the admissions of those other parties, anything that is in there.

MR. PETERS: I do not intend to press that. The court rules that out when I asked him for the signatures. I did not intend to press that.

MR. FROST: We also object on the ground that it is not the original. It is a photographic copy, and if the plaintiffs in this case were capable of getting a photographic copy they are also capable, amply able to produce the original, and it has not been positively identified. The witness says that he thinks probably that is the list; but it has not been properly identified as the list, if such list was submitted.

THE COURT: On that ground the objection is overruled.

MR. FROST: Note an exception.

THE COURT: Exception allowed.

MR. FROST: As to the statement made to the Public Service Commission of the state of Washington we object to that on the ground that it is a statement of value made one year subsequently to any values that are in controversy in this suit, and that it

is in the nature of hearsay and not properly admissible in this case.

THE COURT: The objection is overruled.

MR. FROST: Note an exception.

THE COURT: Exception allowed.

THE COURT: Exhibits E, F, G and H are admitted in evidence.

MR. FROST: We make the same objections to be noted, and exception.

MR. PETERS: This is one of the list I called his attention to and gave him the aggregate values, which I called your Honor's attention and offer it in connection with the other.

THE COURT: It may be admitted in evidence.

(Paper referred to admitted in evidence and marked Plaintiff's Exhibit I.)

MR. PETERS: I will abide by the court's ruling with respect to this not being binding on any but Mr. Aldwell.

On cross examination of Mr. Aldwell the witness states that the Olympic Power Plant was built in the fall of 1910; that a dam was built across the Elwah River. That on October 30, 1912, the foundation under this dam for a distance of 90 feet went out and let practically the whole river flow through. Repairs to this were not completed until September or October, 1914. The witness was asked if it was not a fact that on the 1st of March, 1914, they had an immense masonry dam across the Elwah River with the bottom of the river washed out underneath the dam. He answers:

"No, no; on November 4th, 1913—about December the engineers made a blast. The blast was filled enough so that we could get power to the power house and we were generating power in December 1913 and January 1914; but there was so much seepage going through at that time that we were not sure that we had the dam until we made a further hydraulic fill which was not completed until the Fall of 1914.

He further states that on the 1st of March, 1913 and the 1st of March, 1914 they had conditions grow-

ing out of this blow-out that made the value of this water power plant very doubtful as to whether it would hold out or not, until they got it sealed.

"A. Until we got it sealed. They have the same thing on Cedar River now, and they have not got it sealed yet.

Q. On the first of March, 1913 and 1914 it would have been almost impossible for your power site or dam to have had any market value wouldn't it?

A. Of course. That depends on how a person would look at a dam like that. I was always optimistic and thought it could be done. I don't know about other people.

Q. And the market value would be very doubtful?

A. Yes sir.

Q. Do you know what the general impression in Port Angeles and other places was concerning your dam at that time?

A. Well, the general impression was—

MR. PETERS: We object to that.

THE COURT: That would hardly fix the market value I guess of power plants and the objection is overruled, exception allowed.

A. I think around Port Angeles they were not very optimistic.

Q. In other words the general impression was that your dam and power site was a failure up there?

MR. PETERS: I object to that as being incompetent, immaterial and irrelevant.

THE COURT: Objection overruled.

MR. PETERS: Note an exception.

THE COURT: Exception allowed.

A. Mr. Earles and several others told me that they did not think it would stick.

Q. They told you you could never make it stick?

A. That is what they told me.

Q. That was the general impression?

A. Yes sir.

Q. Mr. Aldwell, did you succeed in sealing the dam so that it would hold water before the 31st of December, 1914?

A. Did we what?

Q. Did you succeed in sealing the dam and getting it to hold water before the 31st of December, at the time on which you made your report to the Public Service Commission, 1914?

A. Yes sir.

Q. You succeeded after the first of March, 1914 and prior to the time you made this report?

A. I said somewhere around September or October, as I recall it.

Q. You thought the dam would be fixed up satisfactorily at that time?

A. Yes sir.

Q. Did this report which you made to the Public Service Commission on the first of March, 1915, in your judgment, represent the market value of that property on the first of March, 1913 or the first of March, 1914?

A. No sir, it would not; and I always said in that report to the Public Service Commission that there was considerable to be deducted from that on account of the blowout but I stated that to counsel. Their figures were satisfactory."

Witness further states that there was a manufactured boom in Port Angeles which began in the fall of 1912 and extended to possibly January, 1913. This boom was manufactured by certain real estate speculators in Seattle, who created the boom and then proceeded to unload at high price the stuff they had obtained, and in about January, 1913 the boom flattened out and there has been practically no market for real estate in Port Angeles since that time. The witness has not sold enough real estate in Port Angeles since January, 1913 to pay his office expenses. It has always been very difficult to arrive at a basis on which to make a value, on which to base values of Port Angeles real estate. The values that then prevailed were entirely artificial and were not warranted by the actual development and growth as has since developed.

The witness' attention is called to the fact that in

his letter to Mr. Grasty, Plaintiffs' Exhibit F) he states:

"Every available house and also every storeroom as being in use and there are over 150 families living in tents and there is a demand for business locations which will cause the construction of several business blocks as soon as the grading is completed."

Witness says that such a condition does not now obtain.

There are some some people living in tents now. The witness presumes they could get houses but there are people living in tents around the mills. He does not know whether if all lived in houses, there would be enough houses. These people are living near the Earles mill, the new mill, at a remote distance from the business portion of the town. Some people suspected at the time this artificial condition and had an idea that the actual values would be a great deal under those created by the boom. There were a number who would not buy property.

A great deal of the property sold during this time was on a partial payment down and the balance in installments in the future. A great deal of this property reverted on forfeiture. Some people are abandoning the property that they then bought.

Witness bought and sold property during the boom. Lot 7 in Block 34 of the townsite of Port Angeles he sold to Howard Waterman for \$3100. in the fall of 1912. This was during the boom. He gave a mortgage for \$1150 for a year. There was ahead of him a \$1000 mortgage. He could not pay this mortgage; it was let run for three or four months, and the deed was put in escrow for a year. Finally he forfeited the property for the mortgage; that is for \$2150 although we still extended the time for him.

It is stipulated by the parties that this lot is assessed for \$1100.

The property of Mr. Rose, the house on the corner of Francis Street, was sold for \$5000. Witness states that himself and his firm own \$50,000 or \$60,000 worth

of unimproved and improved property, part of it in addition lots adjoining the town.

Q. Do I understand you to say that you were willing to sell this at double the assessed value?

A. Yes sir.

Mr. Peters: That would not be competent.

The Court: Objection overruled.

Mr. Peters: Note an exception.

THE COURT: Exception allowed.

Witness would not have been willing to accept double the assessed value of this property on the 1st of March, 1913. He was then in an optimistic frame of mind.

He does not know whether he would have been willing on March 1, 1914; he would now. His present opinion is that the value of that property, consisting of about \$50,000 worth of unimproved lots does not exceed twice the assessed value and he would today willingly sell it for that price.

The witness being asked to explain the character of the real estate market that has prevailed in Port Angeles, said that every two or three years they had movements; that what little he had made while there he made by buying against the market; he would buy when the other fellow wanted to sell; and would sell when the other fellow wanted to buy; "but in 1914 I got a little optimistic. I thought the railroad would do a great deal for the town and I bought considerable property. The witness could not state what number of transfers would be the normal real estate market in Port Angeles, that after perhaps twenty sales were made of Port Angeles real estate in normal times that exhausted the market.

"A. What I meant when I made this statement was that when you have listed property it is awful hard to convince any person that the value will increase so he will buy it. It is hard to get a customer except when these little movements occur.

Q. In fixing the valuations given in these statements, so far as you personally was concerned, I believe you said yesterday that you took for the values

in the whole district valuations fixed upon the basis of the highest sales that had been made within that district?

A. Well I never checked anything up when I made it. I made it, knowing the bonds would run ten years and I knew that they would be paid and there wasn't any chance of any person losing.

Q. The high valuation and estimate which you made was fixed upon the basis of the highest sales that had been made within any of these districts?

A. As I recollect it. If there was any high it would have been the highest.

Q. Even though there may have been only two or three sales within a particular district you would take the highest value on any of those sales?

A. Yes, sir; but as I say, I never made the statement carefully. I wrote it down and put down what I thought it would be worth in an optimistic vein.

Q. But you would take the highest value represented by any sales and assume in that statement that the same valuation would cover the whole district?

A. Well I don't think there were any higher valuations than I put on it.

Q. Would those valuations be borne out by actual subsequent sales, had they ever been?

A. In one or two instances.

Q. In the district as a whole?

A. No, sir; in one or two instances.

Q. In one or two instances?

A. Yes, sir.

Q. Now in a great majority of cases what has been the truth with reference to valuations which you put on at that time of the prices obtaining at subsequent sales?

A. They have not maintained.

Q. And could you say what your valuation was below your estimate?

A. I never looked it up.

Q. You could not make an estimate?

A. No, sir."

The witness is shown by defendants' counsel a

photograph (Defendants' Exhibit 1) taken of Port Angeles before March, 1914, and identifies the following lots shown on the photograph as being in the statement that he made to Grasty. The witness identifies, by pencil figures with a circle around it, the different blocks, points the lots out on the map to the Court, showing those designated on the photograph, the appearance and surroundings as shown thereon, of the lots testified to in the case by different witnesses.

Lot 1, Block 14, right opposite the Coupler Building. This the witness had valued at \$6000.

Referring to the lots west of the above lot on the photograph the witness says:

"This would be the valuation March 1, 1914: Lot 2 \$3000.; Lot 3, \$2500; Lot 4 \$2000.; Lot 5 \$2000. There are no improvements on these lots, except street graded in front of the lots.

Lot 1 Tidelands west of Laurel Street, the witness valued on his statement at \$12,000 and \$8500. on the intermediate lots. These lots are 50 by 300 feet. That is the City Hall on lot 10 Block 32. "I put it at \$4000."

There is a large hill back of these lots. There is no street in existence. It is just a zigzag to the City Hall. The witness thinks that would be pretty level back for three lots, and then the block runs up to a height of about 100 feet. These photographs are marked Defendants Exhibits 1 to 13 for identification.

On Exhibit 2 there is a theatre building on the corner, which was built there before March 1, 1914. This is on the right hand side of Exhibit 2 and is the principal corner in the town.

The witness marks the exhibit with a letter A. This lot the witness valued in his statement at \$10,000.

Defendants introduce as Exhibit 14 a map of the business section of Port Angeles upon which is marked the assessed valuation of the property for the years 1912 and 1914. The 1912 assessment is the top figure, the lower one the 1914. On improved property the assessment on the land is put first and the improvement next for the year 1912, then a pencil line is drawn

and beneath that is the assessed valuation of the land for 1914, and the lowest figure is the assessed valuation of the improvement for 1914.

The witness Aldwell marks with yellow pencil on this Exhibit 14 the boundaries of the business section of Port Angeles and writes upon the map "Business section". The witness' attention being directed to the photograph, Plaintiffs' Exhibit 1 and to the map Exhibit E, he marks with blue pencil upon this map, Exhibit 14, the location of the property shown in the photograph Exhibit 1.

The witness takes the plaintiffs' Exhibit J—the witness' statement of values, and marks in red pencil upon the map, Exhibit 14, the location of the lots referred to in Exhibit J, and the defendant explains that north of the yellow line, at the point in Block 2 of Tidelands east of Laurel Street, there is no business property of any kind.

"Q. Pointing to the land on what you have marked as the business district in Port Angeles, on lot 4 of block 2, Tidelands east of Laurel Street, you say that east was this way, up to the middle of this blue line at the end of $7\frac{1}{2}$ Tidelands east; there is no business property of any kind up there, it is not used for business purposes is it?

A. None whatever.

Q. Is there anything in the configuration of the ground there which causes that?

A. It is over a bluff on the water front.

Q. Now this bluff rises at angle of about what?

A. Quite precipitately.

The witness says that this bluff rises some 80 or 100 feet high. There is no prospect in the immediate future of Lot 1, Block $7\frac{1}{2}$ being used for business or any other kind of property. They did talk of putting a transfer depot in that neighborhood; but if the depot is put there people will have to walk six blocks before they can leave the water front to get up into the town. The property enclosed in the red line on the map Exhibit 14, is contiguous to the business portion of the town. The witness put a valuation of \$80,000 on that

property enclosed in red. That valuation was placed in his statement, Exhibit J. This valuation he made in November, 1914. The witness was more optimistic in March, 1914 than he was in November of the same year; about 10 per cent more. His ideas of what the railroad would do for the town were greatly waning; perhaps 20 per cent would be the proper measure; so that the valuation would have been in March, 1914, \$96,000. That is, if the letter had been written in March instead of November, 1914, the witness' valuation would probably have been \$96,000 instead of \$80,000.

“Q. Now this map shows that that property there was assessed on March 1st, 1914 at fifty-nine thousand six hundred dollars; do you know whether or not that was—what is your opinion as to whether that was a fair assessment?

A. As I recall it at the time, that sixty-two thousand one hundred dollars was the memorandum I had attached to that rough lead pencil note that I had attached to that paper.

Q. You made a rough lead pencil memorandum?

A. At the time I made it up, I went up to the Assessor's office at the time and made it up.

Q. I may have made a mistake on figuring that up. The map will show for itself; You say that you think at that time the valuation was sixty-two thousand one hundred dollars?

A. As I recall it.

Q. The total assessed value?

A. As I recall it. It is easy to figure it on the actual value; that would be one hundred and twenty-four thousand.

MR. RIDDELL: That is double the assessed valuation; it is one hundred and twenty-four thousand, and his testimony is ninety-six thousand.

MR. PETERS: Mr. Frost, that I may keep this straight, I understand that the properties were assessed at fifty per cent of their value.

MR. RIDDELL: From fifty to one hundred per cent, and sometimes over.

MR. FROST: We are not contending that they were assessed at any particular amount. Our contention is that the property was assessed fairly, uniformly and accurately.

MR. PETERS: I will ask them, if your Honor please—well never mind.—Well, I will do it to please counsel. We think they should elect to declare to the Court and counsel whether they claim that the properties in question here in Clallam County were assessed at fifty per cent of their value or at their full value. One of the issues made in the case here is that in 1913 the law was changed and the tax for 1913 ought to have been equalized, that is the assessed valuation ought to have been at a fifty per cent valuation, and the same in 1914. They deny, as a matter of law, that that is proper, claiming in one instance that the Act is not yet matured and does not apply, and in the other instance that it is unconstitutional. It becomes important of course, to find out what they actually do contend as to how they assessed this. The pleadings are not clear.

THE COURT: The Court will not compel them to elect; but the Court will assume unless they disclaim that being officers and under the law are not authorized to act, and the constitutionality of the law, that they assessed it at fifty per cent.

MR. PETERS: I understand the Court takes that theory and I except to that theory.

MR. FROST: If your Honor pleases this is our theory of the law in the case. The constitution of the State of Washington provides that the Legislature shall by general law provide for the assessment and taxation of all property within the state of Washington according to its value in money, so that each person or corporation shall be taxed in proportion to the value of his, her or its property. The courts of the state have repeatedly held that there is no mandatory provision of the statute which would require property to be assessed at its full value in money or any proportion of its full value in money. That the full requirement of the law and the full requirement of the

constitution of the state of Washington and the full requirement of the Federal constitution is completely answered when the assessor has assessed the property within his county equally and ratably and uniformly.

THE COURT: I know you are presuming if there is a statute there that these officers followed the law.

MR. FROST: The statute provides, and we deny the constitutionality of the statute. The statute simply provides that property shall not be assessed to fifty per cent of its value.

THE COURT: Do you deny that it is constitutional?

MR. FROST: We deny the constitutionality of the statute. We have set that up in our answer.

THE COURT: Then you disclaim that it was assessed at fifty per cent?

MR. FROST: We are disclaiming that it was assessed at fifty per cent.

THE COURT: You are disclaiming that there was any effort to keep it down or to keep it at fifty per cent?

MR. FROST: We disclaim that there was any effort to keep it down or keep it at fifty per cent. We desire to show to the Court that this assessor assessed property in that county between different classes of property and different owners and that he assessed that property equitably and fairly and uniformly, so far as it lays within human possibility to do so. We do not claim that assessors are infallible, and the courts do not require that, but that he made a fair, equitable or uniform assessment, whether it be thirty, forty or fifty per cent, we are not here to state. That is something for the Court to determine. We say that the assessor went out there and taxed everybody uniformly and we also allege affirmatively in our answer that it does not matter at what proportion of its actual value property is taxed, because we set up in our answer that all the taxes levied within the state of Washington either for said county, municipality or other purposes, are by law required to be levied upon

estimates in dollars and cents that are made public, giving the public an opportunity to hear those estimates, and that taxes are levied in dollars and cents in fixed sums and the rate necessary to raise that tax is figured by calculating officers, and so far as the constitution is concerned, it matters not whether the assessment is high or low, the only thing we have to contend with is whether or not these plaintiffs have been assessed unjustly as compared with other property or with the general mass of property in Clallam County.

MR. PETERS: The ultimate effect of this will be taken up by your Honor in determining the law of the case; but this is the first time that the matter has arisen in the production of the evidence and it was extremely interesting to us to know what the assessor thought they were doing when he assessed it, whether he was assessing it at fifty per cent of the valuation or one hundred per cent of the valuation. We asked them to outline their theory and I understand they refused to do it.

MR. EWING: We did not refuse to outline our theory; We are not required to do that. This is plaintiff's case. We are at the stage of cross examination of their witnesses. We do not have to try our case now.

MR. EARLE: You didn't make any opening statement when you started your case.

MR. RIDDELL: We don't have to do it.

MR. EARLE: I asked you to do it.

THE COURT: There is nothing before the Court. I refuse to make a ruling.

The witness, referring to Defendants' Exhibit 2, says that this is a view of Port Angeles looking east on Front Street from the corner of Laurel Street and this corner is probably the best corner in the town. Block 7½ Tidelands east, is at the easterly corner of the property around which the plaintiffs have drawn a blue line.

The witness marks on the map, Defendants' Exhibit 14, with a yellow cross surrounded with a red

circle, the points on the map at which the top of the hill is shown in defendants' Exhibit 2. It is between Peabody and Chase Streets which is marked on this map by a red cross. That indicates the top of the hill as shown in this photograph from the business portion of the town. There is the point, Block 7½ which is valued in that statement at \$1250, and is assessed at \$9500.

The witness is referred to Defendants' Exhibit 3, which is looking down the hill just back of First Street, looking down Laurel Street; at the lower right hand corner of Defendants' Ex. 3 is the Aldwell Block. This is a picture of a large part of the business portion of Port Angeles as it existed at the time of the assessment of 1912. The Morse Building has been built later.

Defendants' Exhibit 4 is another picture looking east on Front Street, just east of Laurel Street. Just east of Oak St. is a brick store. This photograph shows practically all the business property on Front Street, except the Cohsburg brick block, which is across the street on the north side and also another building which is on the corner on the north side, a two story frame building.

Defendants' Exhibit 6 shows Front Street looking east adjoining the corner of Laurel Street, in the immediate foreground, as it existed at the time of the assessment in 1912.

Defendants' Exhibits 7 and 8 show the Post Office building on Oak Street, just back of the brick building; also shows lot 11 in Block 15.

Defendants' Exhibit 9 is the corner of Lincoln and Front Streets, being lot 1, block 1 Tidelands east of Laurel Street.

The witness marks Defendants' Exhibit 8 as showing the corner of Front and Lincoln St. looking west on Front, commencing on Lot 1, Block 1 Tidelands east.

Defendants' Exhibit 10 shows the corner of First and Oak Street being lot 11, block 15 of the townsite, looking north on Oak Street. This is taken on First

St. immediately east of Laurel St. looking west, showing lots 20 to 11, block 15, Townsite and other lots on the street.

On the left hand side of Defendants' Exhibit 2 the ground is precipitous. This building, a photograph gallery, is mostly on the street, the building showing on the left hand. And from there the ground rises up to 80 or 100 feet.

Defendants' Exhibit 7 also shows this rise of ground. They have recently trimmed off the top of this bluff on the street above five to ten feet; but the lots were left just the same. That shows the height above the business district. During the Lewis, Wiley & Morse sluicing to make the Front St. fill some of the dirt there was taken off. Lot 10 on top of the hill can be seen from the photograph.

Witness placed a valuation of \$1500. on that lot and the lot adjoining it on the top of the hill at \$900. and \$800 on the next. The witness is directed to mark the descriptions on the photographs.

Witness says that the list of valuations which he made out covers practically all of the business section and the valuations are as of March, 1914.

It is agreed by counsel, in order to expedite the trial, that these expert witnesses on real property might furnish tabulated lists of the property, giving the description of the lot, their own valuation and the assessed valuation, the latter to be sworn to by the Assessor, if demanded, and that this should stand where so introduced as the evidence of the witness subject to cross examination.

With respect to the present list which was offered by the defendants as part of the testimony of the witness Aldwell, the witness was permitted to explain as follows:

"I will say in explanation that I changed 2 or 3 lots in looking it over. As Mr. Peters knows, when talking last night I had in mind and I referred to the time of the boom, and Mr. Peters I think, was mistaken, as well as I was, and he agreed with me,—if the stenographer will turn back to his notes,—I said

that was just before the end of the movement. Now I raised two lots a thousand dollars apiece. Lot 20 in Block 14 at the height of the boom I sold for ten thousand dollars, including the building on it. So in looking at it more carefully than just hurriedly while I was talking here, I took the price of the building off and probably five hundred dollars depreciation between 1913 and 1914 and put that lot at sixty-five hundred dollars. Then I equalized two lots in 15 and raised them from three thousand to four thousand."

Witness further states that he got the years 1913 and 1914 confused for a minute. He had sold Lot 20 for \$10,000. at the height of the boom with a two story building on it, and in testifying he thought of the value of the lot with the building included; but in thinking it over he recalled that that lot never had a building on it; so he deducted the building and some depreciation between 1913 and 1914; but the sale for ten thousand dollars was at the height of the boom. That is lot 20, block 14. He gave the value the night before, upon the witness stand, at Nine thousand, but after getting off the witness stand he changed it to sixty five hundred. He did not communicate with the plaintiffs representatives or counsel after leaving the court room; had no communication with anybody. He telephoned to Port Angeles and got certain prices to arrive at a conclusion. He had forgotten what prices he got on certain lots. The lot that had a building on, that witness had appraised at \$50,000 is lot 10, block 16.

The witness is shown by the defendants, a photograph Defendants' Exhibit 16, which he admits is a panoramic view of the entire residence section of the town. This was taken in the latter part of 1913 or the fore part of 1914. It shows the high school and court house. It is admitted as Defendants' Exhibit 6.

The witness cannot state definitely the time when the photograph Exhibit 8 was taken. It was probably taken 2 or 3 years ago, before the Postoffice building was built, which was started in 1914.

The witness is asked by counsel for plaintiffs if

he would make up a list of the \$50,000 worth of property which he stated he and his partner would take double the assessed valuation for, and says that he will. He is then asked by the defendants:

“Q. What you were stating then is, you would be glad, willing to take double the figures upon the assessor’s books for 1914 for that list of property which you will furnish us?

A. Yes sir.

Q. You would not in February of 1914, would you Mr. Aldwell?

A. Well I would hardly put myself in the frame of mind I was then. I would not absolutely swear to that.

The witness says that what he means is, that he would take that sum now, but whether or not he would have done it at the time inquired about he would not swear.

G. M. LAURIDSON, a witness on behalf of the plaintiffs being sworn, testified substantially as follows:

He has been a resident of Port Angeles for 23 years continuously. He has an interest in a timber claim down in the Solduc Valley.

Q. “And you had a conversation with Mr. Hansen, one of the County Commissioners with reference to taxing that land, did you not?”

A. I had two years ago, or a year ago.

Q. With reference to the valuation that was placed by the assessor and by the Board of Equalization upon that land, did you not?

A. I had a talk with the Board at that time, at the time the Board of Equalization was in session in 1914.

Q. You had a talk with Mr. Hansen as a member of that Board did you not?

A. Well, the whole Board.

Q. And you told them that you thought you were assessed too high for that?

A. I believe I did, yes.

Q. What did Mr. Hansen say to that?

A. I do not recollect what he said now.

Q. You do not recollect that?

A. No.

Q. Now, Mr. Lauridson, just you refresh your recollection the best you can, will you? Is there any way you think you can remember it?

A. Probably Mr. Hanson spoke for the Board, being Chairman of the Board and he said I was assessed like everybody else in there; that they could not make fish of one and flesh of another.

Q. Didn't Mr. Hansen tell you that he could not lower the valuation of your timber because it would make a precedent, and that they would put it in to the timber people?

A. No, he said "If we reduce your assessment it would look as if we were trying to favor you."

Q. As against what?

A. Against the other timber men up there.

Q. Didn't he further tell you that he could not lower that, because they were disposed to stick it into the timber men?

A. No, sir, he did not say "stick it in".

MR. EWING: We object to counsel's manner of interrogating his own witness. These are all leading questions.

The Court: The objection is overruled.

MR. EWING: Note an exception.

The Court: Exception allowed. He seems to consider the witness is reluctant.

MR. PETERS: Oh, yes, Your Honor.

Q. Didn't he tell you substantially that?

A. Please repeat that question.

Q. Didn't you tell Mike Earles that coming down on the boat the other day?

A. I had a talk with Mr. Earles. We talked over things in general, and I think I told him what Mr. Hansen said, that they could not reduce mine because it would not look well to do it. Mine is an isolated claim up there. I am hemmed in by the Lacey people, and I can't get anything for it very much, and

I used that as an argument to the Board.

THE COURT: You deny that you told Mike Earles that?

A. No sir, I do not deny that we had a talk, a general conversation about it. Mr. Earles told me at that same conversation that he would not take the whole of Port Angeles townsite for the assessed valuation today; and we had a talk back and forth of that kind. That is the conversation we had. If he wants to use the words I used to him, I think I am at liberty to use what he told me. He told me that he would not take the whole of Port Angeles at its present assessed valuation today.

The witness states that he has been Vice President of the Citizens National Bank of Port Angeles for four or five years and Mr. Hansen is one of the directors, and has been so for eight or ten years. Hansen has been a County Commissioner for three or four years.

The timber claim that he referred to was assessed for 1914 at \$5270. Witness being shown a paper writing signed by him admits that on July 23, 1914 he gave an option on one-half interest in the property at \$1500. and that was the price he was willing to sell it for.

CROSS EXAMINATION

The witness says that this timber claim was isolated and was hemmed in by the Lacey holdings.

“Q. And by being hemmed in by the Lacey holdings, then, it means not being large enough to constitute an operating proposition of its own, and that ultimately it will be taken by the Lacey's or their successors in interest at whatever they may choose to pay for it, is that true or not?”

MR. PETERS: I object to that as being immaterial and incompetent.

THE COURT: Objection overruled.

MR. PETERS: Note an exception.

THE COURT: Exception allowed. I do not understand that that should affect the question of values for the purpose of assessments any more than

if one man had ten dollars and the other man had a thousand, if you would assess the one man that had a thousand dollars more than you would the man that had the ten, because you had a greater opportunity to assess it; any more than you would assess the man who had a bigger warehouse full of grain than you would assess the smaller one, because it would cost less to house it per bushel. As I look at it, the mere fact that a man owns a small claim, and another one owns a large one, does not affect the question of value at all. The one that has the small claim, if he is neighborly he might get all the advantages of working along with the man who had the other claims. It is an element of hostility, or friendliness that the assessor has nothing to do with. I overrule the objection.

MR. FROST: If your Honor pleases, we alleged in our first affirmative defense that the value of timber is dependent upon many factors, and that among other things is the size of the holding, that a holding that is sufficiently large to constitute a desirable manufacturing or operating proposition is much more valuable per acre, or per thousand feet of timber than are the isolated claims that in themselves cannot be handled, and we expect to be able to put expert witnesses upon the stand who will testify to that condition, when we enter into our affirmative defense.

THE COURT: I cannot conceive under what circumstances I would give heed to any such argument as that in a case of this kind. But I have overruled your objection and it is urged in good faith and some other Court may take a different view of the matter."

On re-direct examination the witness going to the map points out the location of his timber claim along the Solduc River, and says that it is not hemmed in by the Lacey holdings and is not in any one of the zones in which the Lacey people have more than eighty acres of timber, but is hemmed in by the Forest Reserve.

E. W. POLLOCK, a witness for the plaintiffs, being sworn, testified substantially as follows:

That he is an appraiser, connected with the General Appraisal Company of Seattle in the business of appraising chiefly, manufacturing plants; has been in the business some fourteen or fifteen years. They have appraised about 750 plants in the state of Washington, Oregon and other states and in British Columbia and Alaska. These plants were breweries, distilleries and rope factories, saw mills, shingle mills and all sorts of manufacturing plants.

Recently at the request of the plaintiffs the witness visited Port Angeles and went over a dozen shingle mills, and made a valuation and report to the plaintiffs. He visited the assessor's office and verified the property appraised with the property assessed, going over the detailed assessment lists.

Turning to the appraisal list he proceeds to state the appraisal of the Mason & Babcock plant, whereupon the defendants objected, on the ground that it was irrelevant, incompetent and immaterial and that it does not furnish a proper criterion of comparison between the assessments of the plaintiffs in this case.

The objection was overruled and an exception reserved and allowed.

The witness thereupon states that in his report he made comparison in each of the cases with the assessor's figures in order to be sure that he had the same amount of property in his appraisal that was mentioned in the assessor's books. With reference to the Mason & Babcock plant the assessor's description on his detailed sheets for 1914 shows: "One double block plant value of \$700." Witness found there upon the plant a Challoner double block, a knee-bolter, a cut-off saw, three conveyors, a rip saw, a Nagle boiler, Challoner and Taylor engine, power grindstone, swing saw, center crank Porter engine, portable saw mill with three block carriage, 48 inch size, sixty inch circular saw, 15 dead rolls, tools, transmission, pipe and fittings. He estimates the reproductive value of the above items at \$5760. depreciated value 30 per cent off. Assessor's ratio to depreciated value 17.3 per cent.

Witness referring to the Howell-Hill-Ray Shingle

Mill is asked by the defendants whether he knows if the machinery was in that mill prior to the assessment of March, 1914. He says he does because the people at the plant told him that the mill had been shut down for two years. The wife of the man who runs the mill told him this. The objection of the defendants was overruled, and an exception reserved; the same rule upon objection presented by the defendants that the appraisal was some 18 months after the assessment.

Referring to the Howell-Hill-Ray shingle mill, the witness says that the assessor's figures show nine items, as "furniture, two upright machines, two ponies, four horses, two wagons, one 5 x 7 donkey engine, dry kiln, harness, buggies, total \$1590. Now I did not pay any attention to anything except the plant itself, corresponding to the assessor's figures of \$900 I found a 200 foot Burner Conveyor, one boiler, a one hundred and fifty foot conveyor, pond to mill, dynamo, vertical engine, two Sumner upright shingle machines, conveyor, two packing frames, pipe and fittings, cut-off saw, tools, boiler with Dutch oven, transmission, Chandler and Taylor engine. Total value of personal property reproductive cost \$6125.00. I placed a 20% depreciation on that plant, making a depreciated value of \$4900.00, and the ratio between the assessor's figures and my figures is 18%.

MR. EWING: Do you know the condition of the machinery you found there obtaining on the first of March, 1914?

A. That plant was in operation, and it looked in very good condition. I do not know what the condition was in the first of March, 1914; I did not see it at that time.

MR. EWING: Read the question.

Q. (Question read) With reference to the presence of those items of machinery?

A. No, sir, I would not know about that.

Q. (MR. Earle) The McKee Box Factory, located about two miles from Port Angeles?

A. The assessor's value for personal property as shown by the detailed sheet for 1914 was \$100.00.

I found the following machinery: Sliding carriage cut-off saw, long carriage slide cut-off saw, rip saw table, wood frame box board printer, 6 x 8 engine, wood lathe, shafting and transmission, tools, piping and fittings, total reproductive value, \$875., depreciated value at 25% off, \$656.25; assessor's ratio to depreciated value 15%.

MR. EWING: You do not know what the conditions were on the first of March, 1914?

A. No that plant had been shut down a year or two."

This factory had been rigged up to make boxes for the canneries and the witness understood it had not been run since the cannery had been shut down. The cannery was running when the witness appraised the property on a former occasion three years ago, so he would think it was less than three years that it had been shut down.

Witness does not know of his own knowledge anything of the condition of this mill prior to the time he appraised it.

"The Superior Shingle Company out in Eatonville, or the Eaton Valley district, I could not find on the assessor's books, nor the treasurer's any mill called the Superior Shingle Company, so I was not able to make comparison between that mill, and I presume I had better leave that out, since there is no comparison.

The Eacret mill, about five miles west of Port Angeles, more or less; the Assessor's figures show 1 upright, 1 shingle mill and saw mill attachment, furniture and tools. It is written very fine on the assessor's books, total \$550. I took the mill proper, not the furniture and tools and I found as follows: Boiler with Dutch oven, 1 11 x 14 inch Brownell engine, top and bottom circular saw and carriage, cut-off saw, knee bolter, Mitchell clipper, knot saw, emery grinder, Smith molder, pipe and fittings, tools, transmission. Reproductive cost of personal property \$4645.00; depreciated value at 25% off, \$3483.75; Assessor's ratio to depreciated value 15%.

MR. EWING: What were the assessor's figures on that?

A. \$500.00 for the plant, the furniture was in at \$25. and the tools at \$25.00. I did not take those—the tools, I did, too, yes.

Q. You had no knowledge of the conditions that obtained March 1, 1914?

A. I talked to Mr. Eacrett a few minutes about the plant; so I can say as to that that I had.

Q. From what he told you?

A. Yes sir. The E. R. Waite Shingle Mill, east of Port Angeles, the assessor's figures showed: 1 pony \$20.00, 1 buggy, 1 automobile, 1 watch, 1 piano, 1 phonograph, 1 sewing machine, furniture \$25.00, 1 donkey engine, \$250.00, plant \$400. harness \$5.00. That was for 1914. I found the donkey engine and the plant amounting on the assessor's figures to \$650. My list of machinery is as follows: Donkey engine and wire rope drag saw, knee bolter, shingle machine, knot saw, gummer, center crank engine, boiler, pipe and fittings, tools, transmission.

The reproductive value of personal property \$4,350. Depreciated value at 30% off, \$3045.00; Assessors ratio to depreciated value 21%.

The Hansen and Gelnert Mill, eight miles west of Port Angeles, the assessors' figures show: Horses \$420.00, 1 9 x 10 inch Vulcan engine, double block and upright, \$500.00, wagons \$30.00, furniture \$50.00, harness \$30.00, tools \$30.00. My appraisal compared with the \$500. and \$30. item, making \$530. for the assessor's figures. I find the following machinery: Boiler and engine and approximately one mile of water pipe, 12 x 16 inch Atlas engine, small pump, 2 boilers, log haul chain, drag saw, canter, hoist, knee bolter, Sumner upright, double block, gummer pipe and fittings, tools transmission. Reproductive value of personal property \$7515.00; Depreciated value at 25% off, \$5636.25 Assessor's ratio to depreciated value 9.2%.

I want to say about that, that after I had this made, they told me in the Treasurer's office that some machinery had been moved from some other plant to

this plant, since the 1914 assessment, so that that explanation should go with that. I did not learn that until I had this made out. So that extremely low valuation of 9% ratio would not be correct, I should think.

CROSS EXAMINATION

The witness states on defendants' inquiry that he does not know what condition prevailed in March, 1914.

RE DIRECT EXAMINATION

"The Brown and Drury Shingle Mill near Sequim. The assessor's figures for 1914 show a shingle mill at \$700.00; that was under the machinery item of the detailed sheet; an auto truck at \$500. I did not see the truck. My figures compared with the \$700. item, covering the mill machinery alone; I found a boiler with a Dutch oven, Sumner upright shingle machine, shafting, cut-off saw, 175 foot conveyor, column gummer, tools 12x14 inch self contained engine, 4 x 4 vertical engine, dynamo iron repress. Reproductive value of personal property \$3260. Depreciated value of 33 1/3% off, \$2173.32. Assessor's ratio to depreciated value 36%."

Witness does not know what conditions prevailed in regard to this mill in March, 1914.

"The Skavdal Shingle and Saw Mill sixteen miles west of Port Angeles, the assessor's figures show six items; but the ones that cover the property that I saw are the donkey engine, assessed at \$400. and the upright and saw mill mentioned on the assessor's detailed sheet, meaning the plant, at \$700.00, that makes \$1100. to compare with my figure. It is given at \$1500. on the tabulation. I did not rate the four horses at \$300.00 nor the wagon at \$30.00 nor the harness and furniture and that makes a difference Mr. Ewing. It is four horses at \$300., wagon at \$30.00, furniture at \$35.00, harness at \$35.00, which I did not see and which should not be compared with the plant as I saw it. The only items comparing with the plant are the donkey engine at \$400.00——

Q. Items making up the eleven hundred?

A. That makes up the \$1100.00 are the boiler

with Dutch oven, Sumner upright shingle machine, drag saw, conveyors cut-off saw, sled for bolts, dynamo and electric system, 24 foot pony planer, 12 x 20 inch center crank engine, 15 rolls, saw mill and carriage, 9 x 10 inch Vulcan donkey engine on sled, blower, shafting and transmission, tools, pipe and fittings. Reproductive cost of personal property \$6520.00. Depreciated value at 30% off, \$4564.00. Assessor's ratio to depreciated value 25%.

That mill has burned within the last week or two, since I was there.

The Sturtevant & Pellerin plant, eight miles from Port Angeles, assessor's figures show: donkey engine \$300.00, an upright shingle mill plant at \$800.00, total \$1100.00, The other items, mill owned horses, and so forth, I haven't taken into consideration.

I found there a Sumner upright shingle machine, knee bolter, drag saw, transmission, tools, conveyors, log haul, column gummer, 10 x 12 inch Brownell engine, boiler with Dutch oven, small pump, power grindstone, rip saw, donkey engine.

MR. EWING: Did you find any additional items?

A. Their plant, the assessor's description of the plant is contained in one list, upright shingle mill plant,

Q. Do your items correspond with his?

MR. FROST: The assessor described it as a plant.

A. Wherever he has an item of horses I did not appraise and include in the main plant. I made it separate. I made a separate claim showing those horses omitted, but the total is \$1100. to compare with my total. The reproductive cost of personal property is \$6010.00. Depreciated value at 20% off, \$4808. Assessor's ratio to depreciated value 23%.

The Port Crescent Shingle Mill, known as the Joyce mill, Assessor's figures for 1914—

Q. Is it the Port Crescent Shingle Mill?

A. Yes sir.

Q. (Mr. Ewing): I dont find that.

A. Do you find Joyce there?

MR. EWING: All right.

A. The items corresponding to what I found was shown on the assessor's sheet was 4 upright shingle mill, meaning 4 upright shingle machines, assessed at \$2500. The other items, Mr. Ewing, going to make that up are horses, harness, and furniture, which are not embraced in my appraisal. I found 4 upright shingle machines, a Covell automatic gummer, side grinder, gummer, cut-off saw, Bolt conveyor, boiler with Dutch oven, 13 x 16 Chandler & Taylor engine, tools, shafting, pipe and fittings. Reproductive cost of personal property \$6840. Depreciated value at 20% off, \$5472.-00. Assessor's ratio to depreciated value, 45%.

CROSS EXAMINATION

BY MR. EWING:

Q. You don't know about the conditions there on the first of March, 1914?

A. Yes sir, I talked with Mr. Joyce for a half hour, more or less, and I am thoroughly satisfied that the mill was there in 1914.

Q. With the same equipment in it.

A. Yes sir, with the same equipment in it.

WITNESS (Continuing) Fillion Saw and Shingle Mill, plant located about two miles from Port Angeles; assessor's figures show a total of 12 or 13 items and the total of \$8265. Leaving out the items that I did not appraise, my figures correspond to the following items in the assessor's book.

Q. What is the assessor's total on your item?

A. \$5425.00. That covers the plant at \$3500., a 22 ton locomotive, \$1500.00, mechanic's tools, \$350.00, office furniture and fixtures \$75.00.

Q. (Mr. Ewing) Did you make this tabulation they have here?

A. No sir; that was made in Mr. Steinert's office, but I had it verified by Mr. Prickett.

Q. There are three items quoted on this?

A. I do not know where they got that, where those items came from.

Q. What is your total? It gives \$8205. here?

A. \$8265.00 is mine.

MR. EWING: The list I have comes to \$5425.00.

WITNESS: I find in the saw mill, circular head saw carriage nigger, canter, log haul and truck, 11 live rolls, 100 dead rolls, 4 swings, 1 jump saw, 36 inch DeLoach edger, column gummer, Goodell planer, swing saw, 12 x 16 inch Chandler & Taylor engine, Houston moulder, shafting and transmission, pipe and fittings, tools, electric apparatus, office furniture and fixtures in the office.

In the shingle mill is the following machinery: Tatum & Bowen boiler, 13 x 16 inch self-contained engine, 6 x 6 inch vertical engine, dynamo, tools, pipe and fittings, American double block shingle machine, knee bolter, cut-off saw, power drag saw, gummer, Perkins O. K. saw gummer, 30 inch blower and galvanized iron dust system and dust collector, log way chain and jack, 250 feet conveyor, 3 packing frames, transmission.

In the boiler house I found an Erie boiler, 10 x 20 Erie twin engine, tools and pipe and fittings.

In the blacksmith shop, tools, in the round house Climax locomotive.

In the yard outside a steam winch and wire rope for the dry kiln trucks, 2 pumps in the pump house, 2 wood car trucks.

Reproductive cost of personal property, \$23,715.00. Depreciated value at 25% off, \$17,786.25. Assessor's ratio to depreciated value 30%.

MR. EWING: The Riverside Lumber Company?

A. I did not find that. The Superior I found listed, but I could not find it on the assessor's book under that name. It is possibly listed under some other name. I could not find it showed a thing at two or three years ago.

Q. Did you ascertain whether or not the conditions which you found there existed on the 1st of March, 1914 or otherwise?

A. At the Fillion mill, I found that it had been shut down for some time, and he told me, the man in charge, I forget how long; but I had quite a lengthy conversation with him as to prices, and from him I

gathered that the prices of building material and machinery were fully as high, and probably a little higher in 1914 than they are at the present time."

The witness says that his company appraised all the manufacturing plants in Chehalis county in the year 1914 and again in 1915 for the Assessor and for the County Board. The appraisal was made in the hope of reconciling or settling a law suit which had arisen between nine of the largest plants in the county and the assessor, with reference to the claim of over-assessment. They had previous to this dispute appraised 22 of the 46 plants, and for the county they appraised all of them to have them all on the same basis.

Witness is handed the Washington Decisions of August 11th in which the Supreme Court hands down a decision in the cases referred to and identifies it as the case to which he refers.

Plaintiffs thereupon introduce in evidence a tabulated statement of the witness' appraisal which was admitted as Plaintiffs' Exhibit K, over the objection of the defendants as being incompetent, immaterial and irrelevant and that it does not afford a proper basis of comparison to make against the assessment complained of in this action.

CROSS EXAMINATION

The term, "depreciated value" used by the witness, is the value to the owner and taking into account the wear and tear and obsolescence, which may have occurred, if any, on machines. It means the value to the owner after allowing for what life has been taken out of a machine by use or age. In defining this replacement value they took the property in detail at the present price of material, labor and freight or other elements of value, and from that price of new production they deduct what in their opinion, is the proper amount for depreciation. They take the present cost price of new materials.

Witness gives the following illustration: If a man buys an engine for \$2500 second hand, that cost originally \$4500. they would put the price down at

\$4500. and then depreciate it as they saw fit, according to the wear and tear that the engine showed, or that they could find it had been subjected to, but they would start out on the basis of its being originally a new piece of machinery.

Witness says he knows what market value means. He does not think the market value and depreciated value are the same. The market value assumes that a sale must take place to find out what a thing sells for, while the depreciated value does not make this assumption. In figuring the depreciated value, the property is left in the hands of the owner on the assumption that the property has a particular value to him which generally is greater than that of the market value, and that if the owner would want to turn the property into money he would have to sacrifice something from the depreciated value, ordinarily. Witness could not state the percentage at which he would put the market value below the depreciated value, in the case of these shingle mills. In order to do that he would have to be thoroughly familiar with the local conditions as to the shingle market in Clallam County.

Witness admits that he is not familiar with local conditions surrounding these mills. "The market value," says the witness, comes pretty near being a forced sale value, because of conditions, especially in the shingle and lumber business." The supply and demand of shingles, the ability of the owner to make money out of the operation of the mill, his inability to get insurance and make the investment safe—these elements all tend he says, to make the market value. He would not consider the inaccessibility of the market serious in this case, because shingle bolts would be handy to market.

Witness admits that the market value of all these mills is less than the depreciated value, which is put on them. He could not give with this comparison, any percentages.

Witness admits that a great many features enter into the market value of property, such as these shingle mills, that he did not consider in arriving at this de-

preciated value. He thinks the market value in 1914 would be lower than the depreciated value. The boom would only affect the market value, not the depreciated value.

“Q. Would you be willing to make any approximation of the percentage of what you think the market value is below the depreciated value? Would you say it is as much as 25%? I am not going to pin you down. I won't embarrass you by cross-examination but I want your honest opinion.

MR. PETERS: As to what time?

MR. EWING: As to the present time first, and March 1, 1914, after that.

Q. (Mr. Peters) Do you know anything about the market value at the time, or at March 1, 1914?

A. No sir, I never heard of a sale of a shingle mill property made in Clallam County. My opinion, if I gave it at all on that, Mr. Ewing, would be based on conditions in other places, rather than in Clallam County, and on my general knowledge of conditions of the mill and shingle industries.

Q. You say, you qualify it, suppose you give it.

A. I would not want it considered as ever well studied out or anything of that kind.

Q. Well we will admit that.

A. Yes sir, I should think that 25% should come as near as any other figure to my idea at this time.

Q. This little pamphlet which you referred to in your remark to me a little while ago is entitled “The over-worked word “Value”. Do you recognize that title.

A. Yes sir.

Q. Is it the same little pamphlet which you have?

A. Yes sir.

Q. And you are the author of it?

A. Yes sir.

Q. And in this little pamphlet at page 8, under the heading at page 7 “Market value” you use this expression: “The market value of a machine today is one price, and a year later having been superseded by some other invention, it has only a fraction of its

former value, yet the replacement cost would be the same as before". So that statement is true, isn't it?

A. Yes sir, there are conditions where that is absolutely true.

Q. It might happen then that the market value would be pretty nearly nil while the replacement value would still be considerable, as you analyzed those terms?

A. It would not be down to nil, of course, because machinery is always worth something for old iron.

Q. Using that as an illustration, the actual value might be that of junk while the replacement value might be considerable more than that?

A. While they are still using it, I do not think any machine could come down to junk value.

Q. That was between those conditions; I did not want to drive you to that.

A. That is true, to a certain extent.

Q. There might be a very great discrepancy between the market value and the replacement value?

A. Yes sir, there might.

Q. You made this further remark on page 8: "Market values of mill properties are now, and have been for some years, considerably less than the depreciated values, but if there should come a time when for several months or years the market could not be supplied with lumber fast enough to meet the demands, then the market value of saw mills properties, might for a time exceed the depreciated values."

A. That is true.

Q. But under the present condition, for the last six years, the converse of that proposition would be a correct statement?

A. Yes sir.

Q. That the market values of milling property, including shingle mill properties, would be much less than the depreciated value?

A. Yes sir.

Q. That would be true in March 1, 1914, and March, 1912, under general business conditions on the coast?

A. Yes sir. Always taking into consideration that market value is a different thing from the depreciated value.

Q. (Mr. Frost) You made an examination of those plants yourself?

A. Yes sir.

Q. How carefully and how extensively did you make those examinations?

A. Well, I took a list of the machines, and I made a list of the buildings, except the fact that I did not measure any buildings, nor I did not measure any machines. Whenever I could find out the exact size of an engine I did so. I found out the exact size of engines when I could, and when I could not I figured as close as I could from the exterior fittings. I did not make details of the bolts, nor did I measure the belts, nor pulleys, nor shaftings, nor anything of that kind. They are approximate values. And I compared them with other similar plants in our office, our office records, when I came back, to have them in line, as much as possible with other plants that I could compare them with."

The witness further testifies that in examining the engines he did not remove the steam chest covers, or examine the valves or valve sets, to see whether they were rusted or pitted, or remove the piston heads or examine the pistons or shafts or shafting to see whether it was straight or warped; nor in the case of donkey engines, he did not remove the heads from the top of the boiler to examine the tubes; made no cold water test of the boilers to see if they were in a safe, working condition. He admits that his examination was very superficial; admits that a man who wanted to buy a donkey engine would go through all these precautions before purchasing.

The witness was six days doing this appraisal work. His appraisal was independent of the assessor's figures.

On re-direct examination the witness testifies:

That his method of appraisal of these milling properties was not exactly the same as the method adopted

in the cases referred to by him in Chehalis County, not so much in detail; but it was the same method. The witness appraised all the industrial plants that he knew of in Clallam County, except the Olympic Power plant and the Earles mill.

Witness says that his idea of the market value of shingle mills took into consideration the demand and supply of the mills. There have been so many mills which have sold at forced sale that it has brought down the open market price of other mills that have not gone into liquidation.

On cross examination by defendants' counsel, the witness says that his idea of the market value is expressed in his pamphlet as follows:

"The market value shall mean the amount which a man willing, but not obliged to sell, would get from a man willing, but not obliged to buy."

On further cross examination by defendants the witness says that his company is qualified to make appraisal of the market value of such properties as those he testified to, and if appraising property to find its market value instead of its replacement value, would inquire into the supply and demand of the article manufactured by the plant and the profit of the business, (past profits and prospective profits of the business is a line that we do not ordinarily go into), the locality and accessibility of the market and shipping facilities, the accessibility to raw material and cost of labor and all such matters of that kind. Witness did not make that sort of appraisal in this case, did not go into these details. They were asked to make such an appraisal as they made in Chehalis County in the tax cases there, to be used as evidence in the court. The valuations they put upon it was the cost of reproduction.

E. H. Grasty, a witness on behalf of the plaintiff, testified as follows:

He is a broker engaged in the bond, mortgage and loan business. Was conducting this business in Portland, Oregon, in 1913, 1914. Has been so engaged for seven years; during that period living in Portland.

Has done a business of up to a half millions of dollars a year. Witness made three visits to Port Angeles in the year 1914, about February, for the plaintiff. The purpose of his going there was, first, to ascertain the values on real estate in Port Angeles and Clallam county, and also to look into the matter of loans and investments. Witness looked into the matter of assessed valuations in Port Angeles, Sequim and Dungeness. Talked with Mr. Hallahan, the assessor, with reference to valuations in the earlier part of April, 1914.

Q. Just state what that was?

A. I met Mr. Hallahan on account of him being County Assessor, and pointed out to him that the real and assessed valuations of property in Port Angeles,—there was quite a marked difference in the two; that in arriving at the value it was necessary to take into consideration the assessed value. Mr. Hallahan states to me that there seemed to be a difference, but that he had been sworn to do his duty, and he was supposed to assess all property at fifty cents on the dollar, fifty per cent of its value. I pointed out that these assessed valuations were anywhere from ten per cent or under. I asked him if he would mind giving me a letter explaining the difference in the actual value and the real value, and he said that he would, and that he would give it to me that afternoon. That afternoon, before calling on him for this letter, I met Mr. Hallahan on the corner of Laurel St. and Front St., and he was then in company with Mr. Fisher, who was deputy Custom Collector at Port Angeles, and he had been talking with Mr. Fisher about giving me this letter, and Mr. Fisher stated, "Why, Mr. Grasty, Mr. Hallahan can't give you any such letter as you are asking for. It is against the law." I said, "I don't believe there is any such law against giving me a letter stating the truth about any proposition;" and I said, "If there is nothing crooked going on in the assessors office I do not see why I can't have that letter. At that time we talked on general topics, and Mr. Fisher left us. I remained with Mr. Hallahan and pointed out to him the awful difference between the assessed and real value of the

property in Port Angeles. Mr. Hallahan stated to me, he said, "Mr. Grasty, if I were to assess the property here for fifty per cent of its real value, I would break every property owner in Port Angeles, and I have been sworn to do my duty," and he said, "If I were to give you such a letter, it would incriminate myself, and I can't do it."

Q. When was it that that conversation was had?

A. That conversation was had sometime around the middle part of April; I do not remember the date exactly. I think, it was on the 14th or 15th of April that I went there, that I went to Port Angeles, and it was possibly the second day. The first trip there I spent five or six days there, or four or five days.

Q. At that time had you made any inquiry for yourself or for others as to the actual or market value of property in Port Angeles?

A. Yes sir; I had met some of the people in the bank,—I mean, I met some of the business men in the city, prominent business men, I met some of the bank officials and I also met some of the other county officials.

Q. Now, did you announce to Mr. Hallahan, the assessor, that there was any discrepancy between the values that were given you as the market value of these people and the assessed valuation?

A. Yes sir, I did. I pointed out that anyone loaning money on Port Angeles real estate would never make the loans that they required on any such valuations, and unless there was an explanation of why there was such a difference, we could not hope to do any business in that territory.

Q. What answer, if any, did Mr. Hallahan make to that?

A. Mr. Hallahan simply said that he was sorry; that he would like to help me out, but he could not do so under the circumstances.

Q. Did you make any reference to any special pieces of property?

A. Yes sir. Mr. Hallahan pointed out to me, as an instance, the property owned by a man named Morse, on the northeast corner of Laurel St. and First St.

Now, he said, "That property is worth \$15,000.00, but it is assessed for \$800.00 to a thousand dollars." That, of course, was merely one instance of several that came to my attention.

Q. Did he give to you any explanation of why it was assessed at \$800.00 if it was valued at \$15,000.00?

A. He simply said, that there was an agreement among the local people in assessing the property in Port Angeles for what it was actually worth that it would break the property owners. In other words, that it would break them and that he could not do it.

Q. Did he say whether this custom or manner of looking at the assessment situation had prevailed for any length of time in that community?

A. Ever since he had been in office, and that it had always continued. He said, "This custom has always been the practice here."

Q. Did you have any further or other talk with him at different times in regard to the same matter?

A. Yes sir, I did. I had a talk with him—the third visit that I made to Port Angeles I had a talk with Mr. Hallahan, and I had with me Mr. W. A. King of Portland, Oregon.

Q. What time of the year was that?

A. That was in May of 1914, the third visit I made to Port Angeles, in 1914.

Q. Who is Mr. King?

A. Mr. King is from Portland, Oregon, and the son of one of my clients, who I had up there to interest in investments in Port Angeles, and especially, bonds on the Elks Lodge.

Q. Where did Mr. King live, the Senior?

A. In Portland, Oregon.

A. And his son went down with you?

A. Mr. King's son went down with me, yes, sir.

Q. You say that he was present at this conference between you and Mr. Hallahan which you are now about to detail?

A. Yes sir.

Q. What was the result of that conference?

A. We called on Mr. Hallahan and I introduced

Mr. King as one of the gentlemen whom I had up to interest in property there, in investments, and I asked him if he would mind explaining to Mr. King and myself the things that he had formerly taken up with him regarding the method of assessing property in the county, and the values of property, both actual and assessed; and he did so. He proceeded to tell us—I said to him, “There is quite a difference. I would like for you to explain to Mr. King the difference between the assessed and the actual value of property in the county.” “Well,” he said, “we grade the property in the county, and assess it accordingly. Now, he said, “We assess timber in the county more than we do anything else.” And I asked him why he did that, and he said, “that the reason they assessed the timber higher than they did anything else was because on account of the great fire protection in this state; that the timber owners were holding their timber there, and that they were assessed these high taxes in order to make them operate; in other words, to build logging roads and to cut their timber.”

Q. Did he say as to any time during which the policy had prevailed in Clallam county.

A. Well, he said, that that had been their custom right straight through. In other words, they placed the burden of the taxes on the fellow that could afford to pay them. He also stated that the reason that the taxes on the real estate in Port Angeles was so much lower was because of the certain amount of the funds, taxes that were taken by the county and the state for their share, contributing their share for the running expenses of the state and county, and the reason they kept their local taxes down low was for the purpose of depriving the state and the county of taking away from Port Angeles proper any more money than they could possibly help.

Q. Did you, or did you not, finally get a letter from Mr. Hallahan?

A. I didn't get a letter from Mr. Hallahan. I stated to Mr. Hallahan that I was very sorry that he could not see his way to give me a letter, because

he, being the county assessor, it would have a great deal of weight and it would confirm what had already been stated to me by business men and other county officials; and he replied again that he had sworn to do his duty and he could not give me such a letter for fear of incriminating himself. And he produced a little book which had in it the manner of taxation. In other words, he showed us a great many things, and he pointed out his method of taxation, and why that was done and all about it.

Q. Do you recall any besides this Morse building now that he referred to?

A. Well, the Elks property was one of the properties that we took up, the question of the Elks property, and that, of course, was stated to me as a certain value by the committee from the Elks. And later it was appraised by some of the banking fraternity; and Mr. Hallahan stated to me that he thought that the assessed value and the actual value were very far apart. I think that one or two lots were assessed for about \$200.00, when the actual value, as he claimed, was in the neighborhood of eight to ten thousand dollars.

Q. Was that comparison, or the amount that was claimed to be the value stated to you by Mr. Hallahan?

A. It was stated by me to Mr. Hallahan. It was stated by me to Mr. Hallahan for the purpose of getting his views of what the real and actual value was.

Q. What explanation did he make of the discrepancy between the two hundred and the ten thousand dollars?

A. Well, he said, it had been the custom and he just let it go along at that.

Q. Did you have any talk while you were down there on any of those occasions with Mr. Hansen?

A. Well, I did have several talks with Mr. Hansen.

Q. That is Mr. Hansen who was the county commissioner?

A. Who is the chairman of the board of county commissioners.

Q. What were those conversations?

A. Those conversations were substantially the same as with Mr. Hallahan. I asked Mr. Hansen if he would please explain to me the wide difference between the actual value of Port Angeles real estate and the assessed value, and Mr. Hansen stated to me, "Mr. Grasty, we make it our business here to soak the outside fellow, and the fellow that has got the more money, and with our local people we keep these assessments down. We had made it a rule to keep the assessments down, the taxes of Port Angeles property." He said to me, "We have a lot of timber standing in this country, owned by eastern interests," and he said, "It is our purpose to get after those fellows and soak them heavy taxes so they will begin operations, and it will all benefit Port Angeles."

Q. Did you ask Mr. Hansen for any letter explaining the discrepancy in the supposed actual value of the properties and the assessed value?

A. I did.

Q. Did you get any such letter from him?

A. Mr. Hansen gave me a letter explaining the methods of taxation. He also pointed out to me that the people in Port Angeles made it a rule to see that the county and the state did not take too much out of the local funds for their proportionate amount of state and county expenses.

Q. I will ask you to look at this letter Mr. Grasty; did you receive that letter through the mail?

A. This was handed to me by Mr. Hansen.

Q. Where abouts?

A. At Port Angeles, in his store.

MR. PETERS: We desire to introduce this in evidence as plaintiff's Exhibit "L."

THE COURT: It may be admitted.

(The letter referred to admitted in evidence, and marked Plaintiffs Exhibit "L" and read to the Court by Mr. Peters.)

Q. Did Mr. Hansen say to you how long that

method of taxation and equalization had prevailed in Clallam county?

A. He stated to me that it had always prevailed there; that they made it their business to see that it was done in just that manner.

Q. How many talks did you have with Mr. Hansen on this subject?

A. I had three or four different interviews with Mr. Hansen, as I remember it.

Q. Where were they?

A. They were in his store, and in the committee meeting of the Elks Lodge.

Q. Did you make any statement during any of those interviews to Mr. Hansen as to what you were informed was the market value, or supposedly actual value of property there, of Port Angeles real property?

A. Yes, sir, I did. I told him I had understood that these properties were worth a certain amount of money, and that there was such a discrepancy in their actual value, and their assessed value that it naturally called for an explanation from some one who knew.

Q. Do you recall discussing any other special pieces of property other than those that were mentioned in his letter there?

A. Well no, not specifically; just talked it generally.

Q. Did you go about the city or the county with Mr. Hansen?

A. No sir, I did not, except on his own property there that he had sold to a Mr. Hines; I believe he had sold the piece of property on which his store was located. We had a conversation regarding that.

Q. That was Port Angeles property?

A. That was Port Angeles property.

Q. Did he tell you anything about the value of that?

A. Yes sir, he said that he had sold that property for \$50,000 and that it was assessed for twenty per cent of its value, and the reason that that was assessed for twenty per cent of its value was because it had an income of about \$6000 a year, it was shown

that it had an income of about \$6000 a year, being improved,—the Post Office—It is known as the Opera House Block.

Q. Did you have any talk with Mr. Babcock the treasurer of the county.

A. Yes sir, I did.

Q. Where was that?

A. I had several talks with Mr. Babcock in the bank the Port Angeles Trust and Savings Bank, on the street, in the restaurants, and automobiling.

Q. Take the first of those occasions, when was that?

A. The first trip I made to Port Angeles, which was sometime in the middle of April, I met Mr. Babcock and the same question of assessed and real values of Port Angeles real estate came up; and he being the county treasurer, I thought that he would be in a position to give me some authoritative information regarding the subject, which he kindly did. And Mr. Babcock pointed out to me that the property in Port Angeles had never been assessed for what it should have been, or on the basis of its real value; that the real value of Port Angeles real estate could not be arrived at basing the judgment on the assessed valuation. The assessed valuation had nothing to do with the real value of the property; that it had been their custom to hold taxes down in the county.

Q. Was there any reference made to the method of assessing the timber lands in that county by Mr. Babcock?

A. Not at that interview. There was no reference made to that, except on one morning when Mr. King was with me. Mr. Babcock very kindly took Mr. King and I for an auto ride, showing us the territory adjacent to Port Angeles, that is, the logged off land, and some of the farming country, the Elwah River, and some scenery; and he drove us over the city in a brief way. And on this trip I remarked to Mr. King —

Q. Was that in the hearing of Mr. Babcock?

A. Yes sir. I remarked to Mr. King that if Ore-

gon had the roads that Clallam county had they could be very proud of them. Mr. Babcock replied by saying that "Clallam county has a great deal of wealth and especially in its timber, and the taxes against timber here is very high." He said, "These roads will be built out of the funds that we derive from taxing the timber people." And I remarked, after he got through, "Yes, I so understand from Mr. Keeler of Sequim." I represented that Mr. Keeler had informed me that the reason the people in Clallam county had voted to build such fine roads was on the strength of being assured that the timber owners in the western part of the state would be taxed sufficiently to pay for these roads, and that it would not come out of the pockets of the local people.

Q. Was that statement made to Mr. Babcock?

A. That statement was made to Mr. Babcock and Mr. King. In other words, I simply referred to that on account of Mr. Babcock referring to their plans with regard to building the roads, and how easily the timber (improvement) bonds were voted to make those improvements.

Q. Did Mr. Babcock assent to that, or dispute it?

A. He did not dispute it.

Q. (Mr. Riddell) This is your statement which you made to Mr. Babcock?

A. Yes sir, that is my statement made to Mr Babcock.

Q. (Mr. Peters) Did you ever have a letter from Mr. Babcock?

A. I did.

Q. By the way, did Mr. Babcock know at this time that you were inquiring for the purpose of finding the discrepancies between,—what you took to be discrepancies between the supposed market value of real estate down there, and the assessed value?

A. Yes sir, he understood that I was trying to ferret out the true status of affairs regarding property values, and he was assisting me along those lines, and explained to me the difference, the discrepancy.

Q. (The court) In this remark you made to him, you simply said he did not deny it?

A. Mr. Babcock did not deny that statement.

Q. When you told him what the man at Sequim had told you?

A. Yes sir.

Q. (Mr. Peters) He did not say either yes or no?

A. He did not say yes or no.

Q. Now, I hand you what is purported to be a letter dated April 29, 1914, and ask you if this is the letter which you referred to as having been received by you from Mr. Babcock?

A. That is the letter that I received from Mr. Babcock.

Q. Did it come through the mail or through personal delivery?

A. That was handed to me also.

Q. By whom?

A. By Mr. Babcock.

MR. PETERS: I desire to offer this in evidence as plaintiffs' exhibit "M".

THE COURT: It may be admitted.

(The letter referred to admitted in evidence and marked plaintiffs' Exhibit "M" and read to the court by Mr. Peters.)

Q. What further conversation did you have, if any, along this same line with Treasurer Babcock, either during the automobile ride, or elsewhere in Clallam county?

A. On one occasion I had a conversation with Mr. Babcock in company with Mr. King and Mr. Philips of the Port Angeles Trust and Savings Bank, in which I stated to him that I would like to get a letter from the County Assessor, Mr. Hallahan, confirming, together with himself and Mr. Hansen, the statements regarding the assessed and actual value of Port Angeles real estate. Mr. Babcock promised to get me such a letter. And after our automobile ride, the following day, he informed me that he had tried to lead up to asking Mr. Hallahan for such a letter, but he just

could not do it," and I thanked him for his good intentions, and we parted.

Q. Did Mr. Babcock know, to your own knowledge did he know that you were being solicited at that time for a loan on the Elks Building?

A. Yes sir, he did.

Q. Did he know that you were looking around over the values in Port Angeles, ostensibly at least, with the idea of loaning money on the Elks Building?

A. Yes, sir, he did.

Q. Was that to your own knowledge?

A. Yes, sir. That was my own knowledge. Mr. Babcock, was in fact, a great deal of assistance to me along those lines, in arranging for meetings with the Elks Committee, and other gentlemen there.

Witness says that he went over the assessor's books with the assessor, Mr. Hallahan, in his office on two occasions; the first time he was alone; the second time, he was accompanied by Mr. King. Those were the books of timber cruises and the tax rolls of timber cruises. Mr. Hallahan was looking over the books with the witness at the time. The following conversation occurred.

A. There was so much that was said in connection with the taxes—One thing that he said was, "That the timber people were hollering their heads off on account of the taxes that they were being assessed, and that they could continue to do so, but they were going to be assessed, because they never would operate in Clallam county, and that the people had lived there so long, unless the people cut their timber they would always remain in the dormant state that they had been before."

Witness further says that Mr. King was there at the time. Witness had a conversation with Mr. Lotsgezell, county commissioner, which he details as follows:

A. I had a talk with Mr. Lotsgezell regarding the value of property in Clallam county, and in Port Angeles, and he informed me that taxes were higher outside of Port Angeles than in other places in Clallam

county; that the taxing business was in the hands of Port Angeles politicians. He stated to me that they were assessing the timber people rather stiff rates of interest, and that they had been protesting, and he expected some trouble from that source. I asked him if he would mind giving me a letter covering this difference, from his view point between the assessed and the real value of property, and he promised me that he would, and that he would bring it into Dungeness the next morning. This was on Saturday night. At ten o'clock in the morning Mr. Lotsgezell had not put in his appearance, and I telephoned his home, and he replied over the 'phone by saying, "Mr. Grasty, I have decided that I can not give you that letter that I promised you"; and I asked him why, and he stated "That he was afraid of getting himself in trouble; that there were certain things going on that he could not talk about, and that somebody was likely to be gotten across a barrel," and he would explain to me what he meant when he saw me in person, and he could not talk to me over the 'phone.

Q. Did he ever make any further explanation of it?

A. He never did; because I have never seen him from that time to this.

Q. Did you discuss with him in regard to the discrepancy of the valuation and the assessment of any particular property?

A. Not any special property. I did take up with him the matter of the Elks Building, because he, being an Elk was naturally interested in that, and I pointed out to him that in the matter of raising the money on a bond issue that the value of property would have to be appraised, and the people who might investigate those questions discovering such a discrepancy, if the matter could not be properly explained by the proper people, it was foolish to try to obtain a loan. And he simply said, "Well, the matter is as I have stated, and that is that the assessment of taxes are in the hands of a bunch of politicians in Port Angeles."

Q. Did he say whether they were assessing property high or low?

A. He said they were assessing property lower in Port Angeles than any place in the county, and that taxes were too high every where else in the county, both in the farm and the timber districts.

The witness on these occasions talked with certain citizens of Port Angeles, among others Mr. Louis Levy, with reference to real estate values in that city. He details his interview with Mr. Levy as follows:

“A. Mr. Levy pointed out that the actual value of the property had nothing to do with the assessed value; that the assessments were very low, and that their reasons for keeping the assessments down was for the purpose of not allowing the state and the county to take too much money away from Port Angeles in the maintenance of the county and the state. In other words, they made it their business to not let anybody get any money out of the city, or out of them that would not inure to their benefit; in other words, anything that did not inure to their benefit, out of which they would receive no direct benefit.

The witness further says that Mr. Levy wrote him a letter confirming his verbal conversation. The plaintiffs offered this letter in evidence. It is objected to by the defendants on the ground that Mr. Levy is not a county official or a party to the suit in any way.

Plaintiffs offered to show to the court that Mr. Levy is a long time resident of Port Angeles, a large property owner there and that it is the theory of the plaintiffs that there has been a concerted conspiracy on the part of the property owners in Port Angeles to keep men in office who would follow out the scheme of taxing the rest of the county to the advantage of Port Angeles. The objection is overruled by the court and an exception allowed the defendants.

Witness says that Mr. Levy had been a resident of Port Angeles for 20 or 28 years, was in the real estate business; that he had an office at the corner of First and Laurel Streets, and owned the building in which his office was; that he gave the witness an option

on it for \$30,000.00, and said his purpose in selling that was to improve other property he owned in the city.

The letter was admitted and read in evidence and marked Plaintiff's Exhibit "N".

The witness says that he had several conversations with Mr. Levy with respect to receiving applications for loans and that in this connection he took up the subject to the actual and real value of the property which brought out the fact that the assessed value and the real value were so far apart.

The witness also had a talk with Thomas T. Aldwell; with Mr. Lutz, Cashier of the Clallam County Bank; and with Mr. Christenson, Cashier of the Citizens County Bank. The witness details these conversations as follows:

"A. When I first met Mr. Aldwell, I had the opportunity to look over the real estate situation in Port Angeles as regarding the assessed and actual value of property. I pointed out to Mr. Aldwell that I had never known of such remarkable differences in the assessed and the real value of property. Mr. Aldwell informed me that he was not surprised at that, because the people who underwrote the bonds——"

Here the defendants' counsel interposed an objection to this line of testimony, on the same ground as they urged against Mr. Levy's. The objection was overruled on the same ground by the court, and an exception allowed the defendants.

It was thereupon stipulated by counsel for plaintiffs and defendants that it should be understood that the same objection was urged by the defendants to similar testimony being offered by the plaintiffs, a similar ruling by the court and exception to the effect that the conversations were with men who were not county officials, had never been, who have nothing to do with the assessments complained of and have never had and are not parties to the suit in any way and are not charged with conspiracy.

The witness thereupon states:

"A. I pointed out to Mr. Aldwell the real dis-

crepancy between the actual and real value and assessed value of Port Angeles real estate; Mr. Aldwell said "Mr. Grasty, I am not surprised at that because the people who underwrote the improvement bonds that we have just voted and advertised here for regrading this city were amazed at the very low taxable value of the property, and what we claim as its actual value; and he said that several of the prominent business men who were in a position to know the actual values of property in this city, that we prepared a list of the property here in the district, showing its actual value, to which these gentlemen attested the truthfulness of by signing this statement, and it was on the strength of this statement and the property that was listed in the statement that we were able to sell our bonds. Now I would be very glad to loan you a copy of that appraisal valuation of property in Port Angeles in fact, the original, and I will thank you to return it to me after you have finished with it."

Q. What did you do with that list?

A. I submitted that list to my clients, who had instructed me to look into the values of Port Angeles real estate and property.

Q. Was that the list of which the photographic copy was made?

A. I have knowledge that there was a photographic copy of that proposition, that is, that list.

Q. What was done with the original list?

A. I returned that in person to Mr. Thomas T. Aldwell.

Q. Did you ever have any other list than that?

A. I had no list other than that, except merely references from individuals; but I had no list than that.

Q. That is what I am trying to trace.

A. I had no other list except that one list. That was the official list.

Q. What did he say as to the discrepancy himself between the actual values. as to whether there was any knowledge in the community of such list?

A. Mr. Aldwell stated to me confidentially: He said "Mr. Grasty, we are united here in an effort to

hold down our taxes.” He said “Of course we, however — There is a great deal of timber in this county that is not being operated. The people are holding it” and he said “Just confidentially, we are making the timber interest bear the burden of the expense of taxation here, and that is the reason for this condition.” He said: “We have lived here for a long time and there has been no activity and we are aiming to hold the taxable— the taxes, down in Port Angeles”. He said “We have all been working hard, and we have been looking forward to the time when we can get from under this load that we have carried for a long time.

Q. Do you know of your own knowledge whether Mr. Aldwell knew that you were discussing a loan on Port Angeles property for the Elks Building?

A. Mr. Aldwell knew that I was. In fact it was Mr. Aldwell that helped me to get in line to handle the Elks loan, and he knew of my endeavors to secure that issue.”

The witness says, referring to Mr. Lutz, with whom he had a conversation, that he was Cashier of the Clallam County Bank one of the oldest banks there. Witness had the following talk with him:

“Mr. Levy introduced me to Mr. Lutz one afternoon after banking hours, and I was received in the private office of the bank. I made the statement to Mr. Lutz that the assessed value of property in Port Angeles and the real value were somewhat at variance, in fact, so much so, that it would raise a question in the minds of anybody that was going to loan money on property there of the safeness of the loan, and he proceeded to explain to me the reason for the difference in the assessed and the actual value, and was repeating what Mr. Levy had told me. In other words he started to tell me that they had made it their business to keep the assessments on their property in Port Angeles down so that the state and county could not dig into their treasury too deeply; and Mr. Levy interrupted him and said “Mr. Lutz I have already explained that to Mr. Grasty”. And of course our conversation then was merely general. I told Mr. Lutz I would be very

glad if he knew of any one that wanted to borrow money that his bank could not loan—that I would be very glad if he would send them to see me.”

Q. Mr. Christensen, who was he?

A. Mr. Christensen is the cashier of the Citizens National Bank of Port Angeles, Washington.

Q. Was he such at that time?

A. He was such at that time, and had been for a number of years.

Q. He had been a resident of Port Angeles then?

A. He had been a resident of Port Angeles for quite some time.

Q. Where and when did you have a talk with him?

A. I had a talk with Mr. Christensen the first day I arrived in Port Angeles and several thereafter. I think the following morning after I arrived in Port Angeles I met Mr. Christensen walking down from his home to the bank, and he invited me to come in and see him that afternoon, stating that he would be very glad to give me any information regarding the property values in the city of Port Angeles that he could. I went in to see him in the afternoon and he said: “Mr. Grasty, we will take a walk through the business section of Port Angeles, and I will point out to you the different properties here, and will give you my idea of their actual value”, which he did. One property that he pointed out to me was the property owned by Mr. Morse, that I have referred to once before, the corner of First and Laurel, that is the northeast corner. He said “Now this property is worth in my opinion from \$15,000 to \$16,000. They are holding it at \$16,000; but I would say it was worth \$15,000.” I said “Do you know what this property is taxed for?” He said “I don’t know; but it will be a very easy matter to ascertain” which I did later. And I might state that I discovered that it was being taxed for \$800 or a thousand dollars, I have forgotten just which. Then he pointed to the property next door to this corner lot. He said “This piece of property is worth \$10,000.” If I am not mistaken that piece of property had been

improved by a brick building in which Mr. Wilson, the hardware man has a place of business. Next to that property was the Meyer Krups property that Mr. Levy had asked me to make a loan on. The Wilson property was appraised at \$10,000. The Krups property was appraised at \$8000. by Mr. Christensen. Then Mr. Christensen took me further down First Street and pointed out the property owned by Mr. Mando. This property had an unfinished building on it on which Mr. Mando desired a loan, and later came to see me about.

MR. EWING: If the court pleases, I believe under the rules of the Federal Court, that we have to make an objection and save an exception to each particular line of testimony that we object to. I doubt whether the standing objection Mr. Peters referred to will save the record for us.

MR. PETERS: I will agree that the stenographer shall insert it in the record as if you made the objection at the time, and the ruling was made at the time.

MR. EWING: In referenceto this testimony of Mr. Christensen we want a similar objection to that of the testimony of Mr. Aldwell, and with reference to Mr. Lutz.

MR. PETERS: If you do write up the record, it is agreed that you may write the objection into the record as an actual occurrence at the time.

MR. EWING: You will stipulate to that as an agreement in open court?

MR. PETERS: Yes sir.

MR. RIDDELL: With the consent of the Court an exception is allowed.

THE COURT: The stipulation is approved.

(The testimony with reference to the conversation with Mr. Christensen is objected to on the ground that Mr. Christensen is not a county official, and never has been, has nothing to do with the assessments complained of here, and never has had, and is not a party to this suit in any way. Which objection was overruled by the Court and an exception allowed.)

(Witness continuing) On this same afternoon I

told Mr. Christensen that my previous investigation had shown an awful discrepancy in the real and actual value of property at Port Angeles, and the low taxes that were being assessed against the property owners. And he said "Yes, Mr. Grasty, the assessed value of property in Port Angeles is really very low, but there is a condition existing here Mr. Grasty that is very shameful, and that is, the officials here are assessing the timber owners enormous taxes for the purpose of making them operate". He said "They didn't see how, in fact, to let their timber stand and not operate, the taxes would eat the property up in course of a very short time, and that they were being assessed at much higher values in his opinion than the properties were worth. And he said: "It is a shame that condition existed, but that is a fact."

Q. Was there anything said by him, or did you call his attention to the discrepancy between the supposed valuation, and the actual value of Port Angeles city property and the taxes thereof?

A. I did not hear that last.

Q. Was there anything said by him in explanation of the discrepancy between the actual value of Port Angeles property and the assessed value of Port Angeles property?

A. He had no explanation to make on that score at all. He simply pointed out that there was a difference between the assessed and the actual value, and that it was their policy to do that; that it was the policy of the people in Port Angeles to hold their own taxes down, but to raise them elsewhere."

The witness further states that he had a conversation with a real estate dealer by the name of Campbell, who was in the mortgage business and had been in Port Angeles about a year. His office was on the outskirts of the city, on South Front St. Witness understood that Campbell was the agent of Mr. Caine, a large property owner, the man who built the Olympic Hotel. The witness is asked if he had a talk with Mr. Campbell as to values. The same objection was urged by the defendants as to the testimony of Mr. Levy,

the same ruling, and the same exception reserved.

The witness thereupon proceeds:

“Yes sir I had a talk with Mr. Campbell as to values, and Mr. Campbell stated to me that there was a concerted action on the part of the people of Port Angeles to hold the assessed values of property in Port Angeles down, but to place the burden of taxation on the timber people. He said that the timber people had been protesting very vigorously on the taxes that they had been assessed, but that the county had made a cruise of the timber, and they knew the value of it, and that they could holler their heads off, or bring a law suit, and they would never get any relief because those fellows had the bulge on them.

Q. Who did he refer to?

A. Meaning that the county officials had the matters in their own hands, and the timber people could get no relief.

Q. Did you have any talk with Mr. Kealer?

A. I had a talk with Mr. Kealer, yes sir.

Q. Who was he?

A. Mr. Kealer is of the firm of Kealer & Mortland at Sequim.

Q. What business are they in?

A. Mr. Kealer owns the hotel in Sequim and he also owns the telephone company, and other real estate in Sequim.

Q. Was he in the real estate business there?

A. He is also in the real estate business in Sequim.

Q. Did you have any talk with him in regard to the assessments on properties of any kind in Clallam County?

(Defendant objects to the testimony with reference to the conversation with Mr. Kealer, on the ground that Mr. Kealer is not a county official, that he is not a party to this suit, and is not charged with having anything to do with the assessments herein complained of. Which objection is overruled and an exception allowed.)

A. Yes sir, I did. I had a talk with Mr. Kealer

and Mr. Mortland. I will take it with Mr. Kealer first. I had talks with him regarding the values of farm property in and around Sequim and Dungeness, and in fact in the eastern part of Clallam County. Mr. Kealer stated to me that there was no property there worth over \$300 an acre, with probably one or two exceptions, highly improved property, and that it was being assessed too much; that the assessments of property outside of Port Angeles was entirely too high. And I asked him how he knew that these property values were too high, and he stated, "Because he had been called in as a witness in several condemnation suits, or proceedings of some kind, and he knew the values there very well, because he had lived there for a long time."

MR. EWING: This is in Sequim you refer to?

A. This is in Sequim. And he referred to Port Angeles as having the lowest assessment, the property in Port Angeles being assessed lower than any other property in the county.

Q. Did he refer, or did you discuss with him at all, the assessments of the timber interests in Clallam County?

A. I did not discuss that with him. I say 'I did not' I discussed that subject with him, but more especially with Mr. Mortland. Mr. Kealer however, without my referring to the timber, when we were motor-ing from Sequim to Port Angeles, I made the remark that the county of Clallam being so far away that the large population was certainly to be commended, the people were to be commended for being so up to date and for having such fine roads. Mr. Kealer in this conjunction replied "Yes, we certainly have fine roads", but he said "The timber bonds voted for building these roads would not have been carried in the election had we not assured the property owners that they would not have to pay for them but that the timber interests would pay the taxes for the purpose of paying for these roads."

Q. What were those bonds that he referred to?

A. The improvement bonds, road bonds.

The witness also talked with Mr. C. C. Henry, who lived in Port Angeles for a great many years and had considerable property there.

The same objection was urged by the defendants to this testimony as to the testimony of Mr. Levy, on the same ground, with the same ruling by the court and the same exception reserved.

Witness details his interview, as follows:

"A. Mr. Henry submitted to me a list of property in Port Angeles, and also a piece of timber land, timber property in the western part of Clallam County. This piece of property was twenty miles from the ocean. I made it a rule to ask everybody for their tax receipts. I made it my business to ask everybody who applied for a loan to show their tax receipts in order that I might know the actual taxes they were paying. In this connection he was paying taxes on Port Angeles real estate at a valuation of something around ten per cent of its actual value, but over in the timber section of the country he was paying taxes at over fifty per cent of its stated value. And I said to him, "Mr. Henry, why is there such a wide difference in the assessment of the Port Angeles property, they being so low here, and your being assessed at much higher rates in the timber section"? Mr. Henry stated to me "Mr. Grasty, the officials here have entered into an agreement among themselves to tax the timber interests higher than anybody else in the county." He said they had made it their business to hold their taxes at home down, but to make those rich eastern timber concerns operate. In other words, their object in assessing them so high is to make them cut their timber, and thereby bring profit to the people of Port Angeles.

Q. Do you remember any meeting of a committee with reference to this proposed loan on the Elks Lodge in which you were present, Mr. Hansen was present, and Mr. Babcock was present, and some talk was had with respect to the ratio of taxation, and of assessment to the actual values there?

A. Yes sir.

Q. When was that?

A. That was at one of the meetings in the Port Angeles Trust and Savings Bank. I had more than one meeting there, I think it was the second meeting with this committee. In fact, it was the second meeting with the committee.

THE COURT: You said Mr. Hansen and who else?

MR. PETERS: Mr. Hansen, and Mr. Babcock, the county commissioner and county treasurer.

A. They were present with also three or four others. At this meeting I spoke about the awful difference in the assessed value of property, and the real value, and he stated that that would have to be straightened out. I asked him the question,—I asked what the actual assessed value,—what the value of the property was, and Mr. Hansen spoke up and said that the property was assessed for twenty per cent of its value, and Mr. Babcock contradicted him, saying ‘No, it is nothing of the kind’. He said. “The property has always been assessed for ten per cent or less of its actual value. Mr. Hansen did not dispute that; nor did anybody else in the room; but everybody acquiesced in that statement by their silence.

MR. EWING: That established the truth of the statement.

WITNESS: I beg your pardon.

MR. EWING: That established the truth of the statement.

On cross examination of the witness Grasty by the defendants, the witness says that he went to Port Angeles about the middle of April, 1914; was there four or five days; stayed at the Olympic hotel; it was about the 14th or 15th of April. Upon leaving Port Angeles the witness went to Sequim; thinks he was there one or two days, then returned to Port Angeles; thinks he took the boat out of there that night for Seattle and from Seattle went to Portland. He was in Seattle during the morning and left on the afternoon or night train. Thinks he came down from Port Angeles to Seattle either on the Iroquois or a boat owned by the Brewery people; he made the report at Seattle

of conditions found at Port Angeles; thinks he went back to Angeles a week later, possibly ten days later. He made notes in Port Angeles of occurrences there; made a report in Portland; thinks he returned to Port Angeles the last week in April or first of May; was there at that time four or five days.

Witness took a pleasure trip of one day, on Sunday, to Lake Crescent. He was the guest of Mr. Phillips of the Trust and Savings Bank and made inquiries of him as to property values. Witness' three trips to Port Angeles consumed between sixteen or seventeen days. During all these trips he took notes of the conditions he found in Clallam County.

“Q. And from time to time you rendered your reports?

A. That is customary when making an appraisal valuation of property.

Q. You made careful mental notes on all that you found on those trips, did you?

A. I did not only make them mentally, but I made them actually.

Q. So that you could testify in court if you should be called upon to do so?

A. Yes sir.

Q. Now, what was the real object that took you to Port Angeles or Clallam County, when you first went up there?

A. I had two objects in view. In the first place my attorneys, Beebe & Whitcomb of this city, Mr. Beebe had previously spoken to me about Clallam County.

Q. That is the Crescent Oil Company, or the oil company that he is interested in?

A. No. Mr. Beebe is an attorney, he is not an oil man.

Q. I know him. Mr. Whitcomb seems to be interested in an oil well.

A. I don't know about that. Mr. Beebe spoke to me about the country, the possibilities in Port Angeles and that section and stated to me that sometime I ought to go up and look that part of the country over

for the purpose of obtaining an investment. I went there for that purpose. I also went there for the purpose, at the request, of my client Messrs. Earle & Steinert.

Q. I was going to ask you a little bit later who your clients were.

A. Messrs. Earle & Steinert, to ascertain the actual and real value of property in Port Angeles and surrounding territory which I did. Those were the two objects of my visit to Port Angeles.

Q. The first one was merely incidental, however?

A. No, my first visit was not incidental. I went there for the purpose of looking over the situation.

Q. You went there first at the request of Earle & Steinert?

A. Yes sir.

Q. How long have you known Earle & Steinert?

A. About a year and a half.

Q. You never did any detective work for them before?

A. I am not a detective.

Q. You are not?

A. No.

Q. What ostensible purpose had you for going to Port Angeles the first time?

A. For ascertaining the actual values of Port Angeles real estate.

Q. That was your real purpose. I want to know your ostensible purpose.

A. Of my going?

Q. Of your going. Upon what excuse did you first seek the acquaintance of Port Angeles citizens?

A. I had no excuse at all for seeking their acquaintance. It was a building proposition.

Q. What was the proposed building?

A. In Seattle the Elks have a building, the Elks Lodge Building, in which they have their lodge room, and club quarters, and Port Angeles desired the same condition for their lodge.

The witness further says that he knew that the Port Angeles Elks desired a building from Mr. Philips

of the Port Angeles Trust & Savings Bank, who told the witness that the Lodge had been negotiating and desired to obtain a loan wherewith to build a lodge room. Witness did not have this Elk loan in mind when he went to Port Angeles, didn't know such a loan was in contemplation until after he reached Port Angeles. He is not an Elk. The witness had not known Mr. Philips before he went to Port Angeles. The Elks did not come to the witness originally.

Witness has lived in Portland about 8 years; his business is investments and bonds. Witness did not buy any bonds in Port Angeles, and made no loan there. Witness knew what he was expected to do and desired to find when he went to Port Angeles. He went there as an expert on values to ascertain the actual value of the real estate in Port Angeles both the assessed and actual. He knew who Earle & Steinert represented in employing him and received compensation for his services. He does not know where the funds came from that paid him. Witness did not go there for the purpose of touching on timber values at all, but confined his attention entirely to the matter of assessments and realty values of Port Angeles and surrounding territory. On being informed by Mr. Phillips that the Elks wished to put up a building the witness told Mr. Phillips that he would be glad to meet anyone authorized to discuss the subject. Mr. Phillips thereupon made an appointment for the witness to meet a committee of the Elks. Witness thinks he had a meeting that very night with some of the Elks and this meeting was held in the Port Angeles Trust and Savings Bank. Witness did not know at the time that any of the county officials were Elks. At this meeting they discussed real estate values. Witness ascertained how much money they wanted. The Elks wanted \$40,000.

The balance of the witness' negotiations was a matter of figuring on values and equalization, in order to arrive at whether they had sufficient security or not. The witness said he did not give them any \$40,000. They did not give him an opportunity to. He denies

that the amount was afterwards reduced to \$30,000 or to \$20,000.

During all this time he was negotiating with the Elks he was in the employ of Earle & Steinert. Their business was part of what took him up there.

Witness had \$40,000 and more that could have been applied to this loan. He admits that in all conversations with the Elks and with the County officials he made it a point to get their statements in writing, but denies that he intimated the character of the statements that he wanted in writing. Witness was to get a commission of 5 per cent upon this \$40,000 loan if made.

Witness' business title in Portland was "E. H. Grasty Municipal and Corporation bonds. He was not incorporated, and had nobody associated with him; during the last six months he has removed to New York city. His address in Portland formerly was 920 Northwestern Bank Building. He had lived there eight years. He had no partners.

Witness did not do business with his own capital all the time. He had a capital of \$10,000 which fluctuated, sometimes more, sometimes less. His bankers in Portland were the First National Bank. He had a clientel among the banks in Oregon among which he has placed a great many bonds; that was a part of his business to find good securities and underwrite the entire issue. In that way he does not require a large capital in doing business.

Witness had suggested this loan to E. A. King, one of his clients. E. A. King is the father of the man that went to Port Angeles with the witness. Witness also had a firm of builders who were ready to erect the building and take the bonds in payment therefor, provided he would undertake to sell the bonds, J. S. Winter & Co. of Portland.

Witness says the Elks business had nothing to do with the work he had for Earle & Steinert. When the witness went down to Port Angeles he did not know that an action was to be brought for any special purpose. Earle & Steinert asked the witness to make

an appraisal valuation of the real estate and assessed valuation of property in Port Angeles and surrounding territory in Clallam County. Witness in making notes of his transactions did not expect to testify as a witness; did not know why Earle & Steinert wanted him to go down there, but supposed they had some good valid reason. He knew that they had clients who had been assessed excessive taxes but apart from that he knew nothing more. He didn't know at the time that the work which he was doing for them was in connection with any case for their clients. He did know that Earle & Steiner's clients were timber owners.

Witness has had about ten years experience in the real estate business. He didn't know at the time he was up there whether Port Angeles had had a boom or not. The people of Port Angeles had ambitions for the future of that town and they were banking on the state's timber resources to establish their hopes; their hopes were to be realized by making the timber interests operate.

Witness did not get the impression that there was a boom at Port Angeles, but the information that he gathered was pretty generally, that values there were correct. The witness could not exactly reconcile the discrepancy between the real and assessed values as given him but didn't know where to draw the line.

“Q. Your own judgment always counts when you make up your mind; that is the only thing that does count. I will ask you that same thing in another way. Did you believe that the properties which you saw and that you talked of and inquired about had the values that were imputed to them by the people who were trying to interest you in them?

A. The gentlemen who gave me this information seemed to be men of standing, and I naturally accepted their statements.

Q. (Question read) Did you believe that yourself?

A. Why I simply accepted the statements that were given me. I was not there to believe anything. I simply was there to have the people who were local,

and who knew the conditions state to me what they were.

Q. That was the object, to have those people state?

A. It was not for me to form any opinion.

Q. Do you make your loans upon that kind of information or upon your own judgment?

A. I generally make them upon my own judgment.

Q. Exactly; but you did not in this case?

A. I did not make any loans.

Q. Why?

A. When I found the conditions existing among the city officials and the people who were in authority there, handing it to the Eastern timber people, naturally I did not feel it was a very safe place to make loans.

Q. How did that affect the value of the security in any way?

A. Well, it was simply undesirable.

Q. Why?

A. It was simply undesirable.

Q. Why?

A. For the reasons that I have just stated.

Q. Did it impair the value of the property in any way?

A. That had nothing to do with it.

The witness further says that money seeking investment is not likely to go where conditions are not likely to be favorable.

Q. Now, isn't it a fact that in all the conversations you had with people, who you have testified about this morning, you led the conversations?

A. To those who were interested, and in authority, I naturally asked questions.

Q. Questions which included in themselves the nature of the answer which you wanted them to give?

A. No.

Q. Didn't you direct the conversation in such channels that it would lead those people to inflate the

values of the property that they were submitting to you?

A. No.

Q. You did not?

A. No."

In the matter of making loans the assessed value of the property is the basis to arrive at a fair valuation of the property.

"Q. That is the loan brokers usually go to the assessment as giving a pretty accurate indication of the exact value of the property which is offered as security?

A. That prevails generally. That condition prevails generally.

Q. Where there is a considerable discrepancy between the assessed value of the property, and the prices put upon it by the owners, isn't it fair to presume that the owners will boom their property, or inflate its value?

A. If I knew the value of the property I could answer that question; but I don't, not necessarily.

Q. It would be a natural presumption, wouldn't it, that the owner was inflating his value of the property, or that the assessor was being unfair to the public in making his assessment?

A. The owner might know of his reasons why. You are asking long questions and I want to answer accurately, therefore I want to be sure I have it right.

Q. Where there is a considerable discrepancy between the assessed valuation of property and the values put upon it by the owner, wouldn't it be just as fair a presumption that the owner was booming or inflating the value of his property as that the Assessor was failing to do his duty to the public in making the assessment at the proper value.

A. Your question is so long.

Q. Why did you conclude in the case of Port Angeles that the assessor was wrong, rather than that the owner was wrong in the valuation that was put on the property?

A. I simply accepted the conditions that were

given me from both the assessor and the property owners.

Q. You did not form any opinion about it yourself, at all you just accepted what you found?

A. I accepted the values as I found them there, and accepted the conditions as I found them.

Q. State whether or not in your opinion the security offered you by the properties alone on the Elks Building, taking into consideration all of the conditions obtaining at the time you were in Port Angeles was adequate for the loan that they were asking?

A. I did not arrive at that conclusion. The reason for that was due to the fact that my accountant did not finish his audit when the appraisal was made. There was a difference in the appraisal valuation by the Elks. There was a difference in the appraisal valuation by the committee that was appointed to appraise that property, and it was a matter of negotiation and we did not reach any conclusions based on the security that would be had for the amount asked for.

Q. Isn't it true that in the negotiations that you had with the Elks Lodge up there, on all of the money which they were asking you, or your clients to advance, was to go into the construction of the building?

A. That is very true, but I had never seen any plans of their building; I called for those but they were not furnished me."

Witness says that he had a contractor who had agreed with him that if he would obtain the contract for the erection of the building the contractor would, out of his own funds put up this building, and furnish a bond of \$20,000 guaranteeing the faithful performance of that work, and in the meanwhile take \$5000 of the bonds.

On demand by the defendants, the witness produces this writing.

The letter is addressed to Mr. George Grasty by mistake or stenographic error. Witness does not know why the Elks loan did not go through. Witness was in negotiation with the Elks Lodge about a month or six weeks for this loan. He admits that after the

agreement for the loan had been made he called for other things in connection with the loan, which he says were necessary in underwriting and making any loan. He does not recall telling the Elks people that he would have to have sums of money in addition to the commission and expenses covering it.

Mr. Levy in his conversation with the witness had not said anything about the existence of a boom in Port Angeles or the rapid increase in values. Mr. Levy did state that property values had doubled there but aside from that the witness knows nothing.

Witness says that Thomas Aldwell had voluntarily handed him this list of properties of his appraisal while discussing the assessed and real value of property.

"A. When I asked him to explain the difference between the assessed value and the real value of property he was trying to establish in my mind without a question of a doubt as to the correctness of my contention.

Q. And in that way you got possession of that document. He mailed it to you at Portland?

A. He handed it to me. He did not send it to me by mail. He loaned it to me."

Witness told him he wanted to submit it to some of his clients; he did not tell who they were. Witness had not had it photographed. He gave the list to Earle & Steinert. Witness at the time was discussing with Mr. Aldwell the difference between the assessed value and the real value of Port Angeles real estate. Aldwell knew that the witness was there looking over the field for investment.

"Q. What particular investment were you discussing with him when you got that document from him?

A. We were not discussing any particular investment. There was the subject of farm loans, the subject of city loans in Port Angeles, and also the Elks loan.

Q. How did you happen to be talking to Mr. Aldwell?

A. I called on Mr. Aldwell, as I did on other gentlemen.

Q. You went to him without stating any special object that you had in asking him for the information that you requested?

A. Oh, he already knew what I was there for.

Q. What was it?

A. For the purpose of ascertaining the actual and assessed values of property in Port Angeles.

Q. You used the expression this morning that you were up there trying to ferret out property values. Did Mr. Aldwell know you were up there trying to ferret out property values?

A. I do not know whether I used the word "ferret" or not.

Q. Yes, sir, I wrote it down when you said it?

A. I was up there to ascertain the value of real estate.

Q. And you made no statements to Mr. Aldwell as to the reason why you were seeking information from him particularly?

A. Mr. Aldwell knew.

Q. If he knew what was it?

A. Mr. Aldwell knew that I was up there for the purpose of ascertaining and obtaining the actual, the real value and the assessed value of Port Angeles real estate.

Q. For what purpose. Did he know the purpose?

A. I think he figured that I was going to make some loans there.

Q. Did you explain the purpose?

A. I did.

Q. Did you explain to him it was for the purpose of making loans?

A. Not specifically.

Q. Well generally?

A. He knew what I was there for.

Q. What did you tell him you were there for?

A. To ascertain the values of Port Angeles real estate.

Q. For what purpose?

A. For the purpose of making loans.

Q. That time you told him you were there for the purpose of ascertaining real estate values for the purpose of making loans; you told him that, and you gave him that as a reason in explanation for why you wanted to consult with him?

A. I did not give that as a reason. He knew I was there.

Q. How did he know it? He knew you were there, of course; because he saw you; but how did he know why you were there?

A. I called in to see him. He was out of the city, and his brother entertained me until he got back. He knew I was there and knew what I was there for. He even knew it before I met him.

Q. What did you tell him you were there for?

A. For meeting him. I told him I was there for the purpose of establishing the values of real estate, real and assessed in Port Angeles and surrounding territory.

Q. For what purpose?

A. For the purpose of making loans and looking for investments.

Q. And that was the only purpose that you stated to him that you had in seeking this information from him?

A. That was all.

Q. Your real purpose was to obtain that statement that you finally did obtain, wasn't it?

A. No.

Q. Didn't you know at the time you talked to Mr. Aldwell that objections had been made by those proposed purchasers of the improvement bonds on the ground of the insufficiency of the land values back of the bonds.

A. No, sir, I did not know that.

Q. How did you happen to speak of it a little while ago; when did that information come to you?

A. That information came to me after I had met Mr. Aldwell and had asked him to explain the difference, the discrepancy between the assessed and

the real value. He then informed me that he had a list that had been prepared by himself and other prominent men, and that he would furnish me with that list, that signed list.

Q. You did not represent either directly or indirectly the prospective purchasers of those improvement bonds, did you?

A. That was not necessary.

Q. (Question read.)

A. Do you refer to the Elks bonds, or the improvement bonds?

Q. No, sir, the local improvement bonds

A. Those local improvement bonds were bought by somebody else, not by me.

Q. (Question read.)

A. I had nothing to do with the improvement bonds.

Q. In no way whatsoever?

A. I did not bid on them and they were issued and brought out before I made the trip to the city.

Q. (Question read.) You do not need to dodge that question. There is nothing dangerous in it; why can't you answer it?

MR. FROST: Answer yes or no.

Q. (Question read.)

A. You are referring to two different bonds—Are you speaking about the Elks bonds?

MR. EWING: No, sir, the local improvement bonds for the purpose of use in the sale of which Mr. Aldwell prepared the statement that you obtained from him?

A. I knew nothing about those improvement bonds until I talked with Mr. Aldwell.

Q. Did you directly or indirectly represent the purchasers of those improvement bonds.

A. If you refer to improvement bonds issued by the city I had nothing to do with that, and they were issued before I ever made the trip to Port Angeles.

Q. I do refer to that; and you had nothing to do with them?

A. Nothing to do with them.

Q. And you did not represent anybody that did?

A. No.

Q. In no way at all?

A. No."

"Q. Then why did you take that statement that Mr. Aldwell had offered to you?

A. I simply accepted that statement in good faith, that is, that he had made a statement that was correct, and I accepted his statement. I had no reason not to accept it.

Q. You were rather glad to get that, weren't you?

A. I do not know whether I was glad or not.

Q. What did you do with it?

A. I submitted it to Earle & Steinert.

Q. Did Earle & Steinert to your knowledge represent either directly or indirectly any of the persons in any way interested in those improvement bonds?

A. I do not know that."

Witness further says that Earle & Steinert did not retain the statement long, but it was returned to him and he returned it to Mr. Aldwell. He knew that the list had been photographed but did not tell Mr. Aldwell so.

"Q. Did you ever get the least idea in the world from your own experience as a real estate man that the values put upon properties in Port Angeles by the people that you talked to were the genuine and actual values?

A. Please ask that question again?

Q. (Question read.)

A. In the first place I am not considered a real estate expert.

Q. Go ahead, is that all? (Question read.)

A. I am not a real estate man, so I would not know.

Q. You have no opinion about those values at all?

A. I simply accepted what was given me.

Q. But you had no opinion of your own?

A. Not in these matters.

Q. Notwithstanding that you were going to actually make a loan and had a client who would assist

you in the manner in which you described to make the loan upon the Elks property up there in Port Angeles, and you formed no opinion about the values yourself?

A. When it comes to underwriting a bond issue on a building or a piece of property that is a different thing. I have some knowledge of values.

Q. You were up there though, for that special purpose, to satisfy yourself as to the values up there, you said, is that correct; and yet you never formed any opinion?

A. I went there in the interest of clients, as I stated before, and also to look for business.

Q. In the interest of clients whose interest you wanted to safeguard by using the information that you yourself had obtained.

A. When you find conditions existing in any locality as they did in Port Angeles, it is very necessary to go very cautiously, to proceed cautiously.

Q. What are the conditions that you refer to?

A. The great difference between the assessed value of property and its real value.

Q. To proceed cautiously, and therefore you went there for the purpose of satisfying your own judgment upon the matter of values?

A. I discovered that condition after I arrived there.

Q. You discovered that condition after you arrived there and yet Earle & Steinert sent you up there to discover that condition.

A. They asked me to go up and ascertain the real and actual values of property, and I did so.

Q. But you did not discover the actual condition until you got up there and after discovering it, representing people who wanted to loan money up there, you never formed any opinion as to the values yourself? Primarily who did you go up there for, your loan and investment branch, or Earle & Steinert?

A. I primarily went up for Earle & Steinert?

All of the witness' expenses to Port Angeles were paid by Earle & Steinert. Witness had known Earle &

Steinert about a year and a half; was introduced to them by Mr. Wood Beal, who is interested in one of the companies, plaintiffs, in this case. The witness met Mr. Beal at the Washington Hotel in Seattle in February, 1914; he met him casually, through friends stopping at this hotel. The witness had occasion to go to Seattle from Portland thirty or forty trips last year, and upon one of these trips met Mr. Beal. Mr. Beal asked the witness if he would meet his attorneys and go into some matters with them, and witness said that he would. Mr. Beal knew that the witness was in the investment line and had some knowledge of securities for investment purposes. Witness had had no previous correspondence with Mr. Beal or anybody representing his company. His acquaintance with Mr. Beal extended over a period of three months before he had a meeting with his attorneys.

Witness is asked by the defendants, whether he requested Mr. Hansen, in the letter Hansen wrote him, to put in that letter the 1912 assessment and not the 1914 assessment and answers that he did not.

Witness admits that he asked everybody who approached him for a loan for their tax receipts. He requested to know the actual value and the assessed value, and he requested them to submit their tax receipts because he wanted to see what they were actually paying. This information he desired for both Earle & Steinert and his investment clients, and reported it to both.

Witness does not know anything about the tax laws of the state of Washington or when the taxes are due. Witness understood that the tax receipts shown him were for the last taxes paid; he didn't know whether they were for 1913 or 1912.

Q. * * * Did you ever find any cases in your investigation where the assessed value and the value put upon the property by the property owners was pretty nearly the same?

A. I did not find one instance. The ones that I discovered were anywhere, the assessed value was 8% and the owners value was ten times that.

Q. That was the kind of assessment and valuation that you were particularly looking for, wasn't it?

A. I was not looking for any special valuations. I was taking the thing as they came.

Witness says that he talked with the following people who came to him for loans, in Port Angeles: Mr. Shields, Mr. Morse and Mr. Smith and Mr. Meyer Krupp. There were several others but he does not recall their names. He did not receive letters from any others than those he has already testified to. I asked these people for letters explaining the difference between the assessed and the real value of property. I did not tell them what to put in there. They knew from that request what to put in I suppose.

Witness says that the people from whom he obtained letters in regard to real estate values of property in Port Angeles, had made certain statements to him and he asked them to write a letter to him confirming these statements, because the conditions that existed there were so remarkable and he wanted letters from people who were in authority and could state facts, to explain; he wanted a confirmation of it in addition to their verbal or oral statements. This is the explanation he made to the people who gave him the letters.

Witness denies that he knew at the time that these letters were to be used in a law suit; but he did know that he was going to give them to Earle & Steinert.

Upon re-direct examination plaintiffs introduced the letter written by the contractors to E. H. Grasty as exhibited and the same was admitted as Exhibit O over the objections of the defendants' counsel, on the ground of its being incompetent, irrelevant and immaterial. Exception noted and allowed.

Plaintiffs then introduced the letter of Mr. Christensen to Mr. Grasty, to which objection was made by the defendants on the ground that Christensen was not a county official, had nothing to do with the assessment of taxes and was not a party to the suit. The

objection is overruled and an exception allowed. The letter was admitted as Exhibit "P."

On re-cross examination by the defendants, the witness is asked as to what assessments he understood were referred to in the letters given him, whether for 1914 or 1912. He says that he simply accepted those that were given him; he didn't know anything about the tax laws; didn't know that property was assessed biennially; didn't know that the assessment rolls for the year in which they were made up are not completed and delivered until the first of August of that year.

RE-DIRECT EXAMINATION

BY MR. PETERS:

Q. When you went into Mr. Hallahan's office as assessor, and asked for the assessment roll did he tell you what roll it was, for what year?

A. No.

Q. What did you ask him for?

A. When I went into his office I merely looked over his assessment rolls.

Q. What rolls did you ask for?

A. I did not ask for any special rolls.

Q. Did he tell you they were the rolls of 1910, 1911 1912 or what?

A. No sir, he did not tell me. He simply says: "These are the assessment rolls."

Q. That is what he said?

A. Yes.

Q. These are the assessment rolls?

A. Yes sir.

Q. And these were the ones that were exhibited to you and these were the ones that were in the office at the time?

A. Yes sir.

(Witness excused.)

W. A. King, a witness produced on behalf of the plaintiff, testified as follows:

That he is 32 years of age, was born and has ever since lived in Portland, Oregon; is the son of E. A.

King, referred to in the testimony of E. H. Grasty herein. Mr. King senior was also born and has lived continuously in Portland. The witness is Assistant Manager of the Portland branch office of the American Surety Company; was acquainted with Mr. Grasty in 1914; accompanied him to Port Angeles in May of 1914. On the first day there they met several of the business men. Witness went there at the request of Mr. Grasty who said there might be some investments there that would interest the witness' father; that Mr. Grasty had asked the witness' father to go and found that he could not and so Grasty wanted witness to go, and report and also said that he might wish the witness to corroborate a report which he would make of the assessed and appraised value of property down there. Mr. Grasty did not tell him what the information was wanted for, nor did he know that any law suit was involved.

“Q. When you went to Port Angeles in May what occurred?

A. Well, the first day, as I remember, we spent— Mr. Grasty was looking up this Elks loan, the bonds that were to be issued in building the Elks Building, and we met several people. On the second I believe Mr. Babcock called for us at our hotel, by prior arrangements, and we went with him for an auto ride around Port Angeles.

Q. Was there anything said at that time by Mr. Babcock with reference to discrepancies between the assessed value and actual value of property in Port Angeles during that ride?

A. As I remember, nothing only the assessed value of Port Angeles was low, the taxes on the property was low in the city. And the only reference he made to the difference in the taxes to inside property, on the city property, and on property outside, was when one of us remarked about the good roads. He said that they could afford to have good roads—not “afford to” but they meant to have good roads, that the natural resources of the county were great, lots of timber, and the taxes from the timber contributed largely to

the building of roads, and that they had the building of additional roads in contemplation.

Q. Did you have any talk with Mr. Hallahan or were you present with anyone talking with Mr. Hallahan, the assessor?

A. Yes sir.

Q. Was he on this automobile ride?

A. No sir.

Q. Where was that talk?

A. In Mr. Hallahan's office.

Q. Whereabouts?

A. In the court house. We were there the forenoon.

Q. What was the conversation?

A. Mr. Hallahan was in his office when we called shortly before noon, and we were talking about the method of assessing the property. Mr. Hallahan said to us that the property was graded for the purposes of assessment. He said that "the timber was assessed higher than any other class of property, and for the purpose of making them operate." He said "If it wasn't necessary for them to pay high taxes they would be content to leave the timber standing in Clallam County and cut elsewhere. They would leave the timber in Clallam County until the last because of its fire protection, the excessive rainfall in the timber belt diminishing the probability of loss from fire.

Q. What affect it at all did he say this was going to have upon their operating and high taxes?

A. He said that they could not afford to pay the high taxes without operating; that that was the purpose of forcing them to operate.

Q. You say this was in May that you were there?

A. I was there on the 14th and 15th day of May, 1914.

Q. Were you thereon any visit with Mr. Grasty?

A. No.

Q. By the way, was your father at that time a man of means?

A. Yes sir.

Q. What if any connection did Mr. Grasty have with his affairs?

A. Mr. Grasty was handling some of his business and his stocks.

Q. Generally what was your father's financial and probable responsibility at that time?

A. I should say in the neighborhood of a million dollars, close to a million dollars.

On cross examination the witness testified that he does not know much about realty values himself; that was his first visit to Port Angeles. He did not know very much only what was told him about the future prospects of the town.

“Q. And could you form an opinion from what you saw there as to whether or not the actual values of property were anywhere near the figures that were put upon them by the people that you talked to?

A. Oh, I would not rely upon an opinion that I formed at that time because of the briefness of the visit there. I only know what they told me of the values.

Witness' business is surety bonds. He has some idea of property values in Portland. In going into a town like Port Angeles and getting an idea of values there, witness would have to rely upon what was told him by the residents. Witness would rely largely upon this information and the assessed valuation placed on the property.

Witness does not know whether the properties in Port Angeles that he looked at were worth anywhere near the figures that the owners put upon them, as submitted to him, or not. He would not consider himself competent to place values upon property there.

Witness was not connected with Earle & Steinert in any way; had no business or negotiations with them.

Q. You went up with the genuine purpose of looking after the possibility of your father making investments up there?

A. I went at the request of Mr. Grasty who said there may be a possibility of making an investment there.

Q. You had a genuine idea in your mind of such a possibility yourself; that is what you went there for?

A. I could not be in a position to report to my father if anything looked—if any investment presented itself, I thought I would be interested in it.

Q. With that idea in mind, having gone up there for that purpose you must have formed some idea of the values up there; I asked you what they were?

A. As I remember there was nothing materialized that I had occasion to put up to my father.

Q. That is true, nothing came of it, but property that was called to your attention was a possible investment for your father, I want to know whether in such case as that your own opinion is that the property was actually worth anywhere near the values that were placed upon it by the people that showed it to you?

A. As I say, we talked with quite a number of people and their statements were concurring more or less as to the value.

Q. What was your opinion about it? Do you think the values were actually there that they told you were there?

A. I would not have formed an opinion unless there had been a definite investment that had presented itself and that my father would rely on my opinion as to the value of the property.

Q. Mr. King, isn't it a fact that if you go into a strange town and get to talking about realty values and a man tells you here is a lot that is worth so much you instantly form a conclusion in your own mind, whether you are a real estate man or not, whether that man's figures are correct?

A. We always have some idea of the value of property.

Q. Wasn't that true of Port Angeles?

A. That was my first visit to Port Angeles. I knew nothing in the way of what they exhibited. Nothing ever developed.

Q. You went up there for a definite purpose?

A. It may have been a definite purpose.

Q. It was a definite purpose when you went up there, wasn't it?

A. There was nothing definite came of it.

Q. You say you went up there to view for yourself possible investments that might be accepted by your father?

A. Yes, sir, there was none submitted to him.

Q. None submitted to him, but properties were shown to you?

A. Just casually pointed out.

Q. Just casually pointed out. In your opinion were the values of those properties casually pointed out actually equal to the figures that were put upon them by the people that pointed out to you?

A. I said the property was casually pointed out; more in the line of general talk. But it was not pointed out for the purposes of bringing it to my attention as security for a loan.

Q. No matter how it was pointed out, what is your opinion as to the values of properties that came under your observation in any way, or manner whatsoever, as compared with the values put upon those properties by the people who called them to your attention.

A. I formed no opinion.

Q. You did not? You went down there for that purpose and yet formed no opinion?

A. Had there been anything crystallized and put up as security for a loan, possibly I would have looked into it at greater length; but I only stayed there two days as I remember it.

Q. Did you have anything to do with the Elks Lodge?

A. Not at all. I am not a member of it.

RE-DIRECT EXAMINATION

BY MR. PETERS:

Q. Did you hear any conversation on Mr. Hallahan's part either to you or Mr. Grasty during that visit, say, in front of the Sol Duc restaurant, along about noon as to the standard of assessment of Port

Angeles property compared with its actual or market value?

A. Yes sir, I remember that.

Q. What was said?

A. That was after luncheon at the Sol Duc restaurant.

Q. What was said?

A. And the question was asked by Mr. Grasty to Mr. Hallahan, he says "I want to know what the assessed value of Port Angeles property has to do with the real value" and Mr. Hallahan replied "That the assessed value had nothing to do with the real value; that it was assessed for very much less than its real value; that if it was assessed according to its real value it would break some of the property holders to pay the taxes."

Q. Was there anything further said by Mr. Hallahan?

A. He told us of the assessed value on a lot owned by Mr. Morse as being \$1000.00 and what he considered the actual value, \$15,000.

Q. (Mr. Ewing) What he considered, or what Mr. Morse considered?

A. What Mr. Hallahan considered. He says It is worth \$15,000.

Q. Did he give you any other lot that you recall now; did he specify any others giving the comparative value and the assessed value?

A. No sir, I don't recall any others.

On re-cross examination by the defendants, witness says he visited Port Angeles in May, 1914; he has recently refreshed his memory of the occurrences there since that time. He took notes of the conversations at the time he was up there; made pencil notes. Mr. Grasty and he were together on all the occasions during the two days that he was there, when these conversations occurred. They did not make their notes together. Witness made his independent of Grasty. Neither he nor Grasty directed the channel of the conversations with people that they were talking to. They spoke to them very frankly. The first time witness

met Hallahan the assessor, was on the street; he was introduced to him. Grasty invited Hallahan to lunch with them at the Solduc Hotel. Witness admits that he is not in the habit of taking notes of casual conversations that he has with strangers in strange places. He took notes because Mr. Grasty had told him previously that he might want him to substantiate a report that he would make.

In answer to the question as to whether witness really went up there to help out his friend Grasty, he says he went at Grasty's request to look into the possibility of his father's making investments and that Grasty wanted witness to learn about the assessed and real valuation of property there. Grasty said he might want witness to confirm a report that he, Grasty, would make. Witness wanted to make a report to his father if there was a likelihood of his father being interested in those Elk bonds. Witness did not investigate the value of the security offered by the Elks. Nothing came to a point or focus; had there been anything that would have interested his father he would have looked into it. Witness had these notes but didn't know at that time whether or not anything more would come of the Elks bond issue; that was left for further investigation by Mr. Grasty and the committee who represented the Elks. Witness did not know what Grasty was going to use his information for. Grasty told witness that he might want him to substantiate some reports that he would make; not to substantiate them in court. Neither witness nor witness' father owns any timber lands in Clallam County, or is interested in any way with any of the plaintiffs or their lands.

"MR. FROST: If your Honor pleases, at the beginning at the trial of this case your Honor announced that Friday of this week would be the last day it would be possible for you to sit in the trial of the case, and also announced that if the oral testimony was not all taken by that time that the case would have to be concluded by the taking of depositions. We have to suggest that the plaintiffs in this case

have already consumed more than one half of the time allotted by your Honor in the taking of oral testimony and that we have a great number of witnesses here whose testimony we should like to adduce before the Court goes. We think it is only fair to the court, having seen the witnesses for the plaintiff, having had an opportunity to form an opinion as to their credibility, that the defendants in this case should likewise have the opportunity of having their witnesses brought face to face with the Court.

THE COURT: Is there any objections to my reading your depositions?

MR. PETERS: Not at all, your Honor. I think it is a wise provision. But besides the depositions there are two more points that we want to cover, one is of the value of a mill property down there that is not quite ready to report. It won't take more than ten minutes to offer that evidence; and the other is another piece of testimony that we might put in, and it won't take more than five or ten minutes.

THE COURT: Do you want to take it up out of order.

MR. PETERS: We would like to put it in out of order, and I think it would be a very good idea to take up their case now.

The court inquired whether there would be any objections to his reading the depositions which had been taken and filed in the case. To this the parties assented and the plaintiffs thereupon offered the depositions of R. W. Schumaker, S. J. Lutz, Benjamin N. Phillips, James P. Christensen, J. A. Adams and William Garlick, with the understanding that they might be subsequently read before the court if desired. This was assented to by the defendants' counsel and the court.

Thereupon the plaintiffs rested provisionally as above stated.

JOHN HALLAHAN, produced as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FROST:

Q. What is your name?

A. John Hallahan.

Q. What official position did you occupy during the years 1912 and 1914 in Clallam County, if any?

A. County Assessor.

Q. As County Assessor of Clallam County did you have charge of making a cruise of the timber lands of that County?

A. Yes, sir.

Q. Will you state whether practically the entire west end of Clallam County is timber?

A. I would so state.

Q. It is all timber?

A. Practically all timber, excepting a few prairies.

Q. Did you prepare a map, which you have in your hand, did you color a map?

A. No; the coloring was not done by myself.

Q. Did you examine it?

A. To some extent, yes, sir.

Q. Does that map show the different colors and different ownerships and holdings of timber in Clallam County?

A. Yes, sir; not all of them, but for the most part.

Q. Shows all the large owners?

A. Yes, sir.

MR. FROST: We would like to offer this map in evidence.

(Map marked for identification defendants' exhibit "18" and handed to counsel for plaintiffs.)

Q. In this connection, while counsel is looking at the map, I desire to call your attention to the fact that in the complaint of Plaintiffs' they have given numbers to these various zones in their complaint they have given this interior zone as number 1.

THE COURT: No. 1 is on the Straits.

MR. FROST: In their complaint and in their exhibit attached to the complaint, they place No. 1 on

the interior; in other words, the complaint does not correspond with the map that they have offered in evidence. They designate in their complaint No. 1 zone as an interior zone.

MR. PETERS: That is a mistake.

MR. FROST: In preparing our map we followed the number which plaintiffs followed out in the pleadings themselves so we have the interior zone as No. 1, to correspond with the complaint of plaintiffs. We did not notice that at the time they were offering their testimony.

MR. EARLE: Counsel is incorrect that we numbered it in the pleadings. It is numbered in the exhibits.

MR. FROST: I intended to say in the exhibits attached to the pleadings.

MR. EARLE: And exhibit 1, having to do with the first zone in which the plaintiffs have any timber was naturally numbered in accordance with the manner in which it goes along as an exhibit. Zone 2 is the first zone in which plaintiffs have timber, and it is called here exhibit "B." Zone 1 in which we have the first timber does not correspond with the map.

MR. FROST: This map corresponds with the designations in plaintiffs' complaint, and we regret that we did not catch it sooner.

THE COURT: Is there any objection to this map?

MR. PETERS: When was this map made?

WITNESS: This map was made very recently.

Q. For the purpose of this litigation?

A. Yes, sir, for the purpose of this information to testify by.

Q. You did not make it yourself?

A. No, sir, I did not make it myself. It was done under my jurisdiction.

Q. Who did make it?

A. The gentleman who made the map is present, and the coloring, Mr. Benson.

MR. RIDDELL: It was made under my directions. I will give you my word it is correct.

MR. PETERS: You checked it yourself?

MR. RIDDELL: I have not.

MR. EARLE: You have checked it yourself, Mr. Hallan?

A. It is hard to make a map like that and get it exactly correct, because the lots do not correspond to the sections. It is as nearly like it as you could make it.

MR. PETERS: So far as the lands in controversy are concerned they seem to be placed on, and undoubtedly counsel for the plaintiffs have checked it, they are in proper place with reference to the zones, the sections, and township, doubtless the lands in green here, the McCarty lands, and possibly the lands in blue.

MR. FROST: Lands in green.

MR. PETERS: Then the lands in green of plaintiffs in these two suits are the same?

Mr. Frost: Yes, sir.

MR. PETERS: We don't know anything about the ownership or location—I myself don't, and the pleadings do not refer to it. We do not know anything about the ownership of other holdings in the County. You refer to the Merrill & Ring lands here, and the Goodyear lands here. So if this map goes in at this time we do not wish to be concluded by the admission. I have no doubt that counsel does not propose to hold us by an admission that the ownership is as indicated, but this is illustrative at this time.

MR. RIDDELL: With reference to the lands in controversy.

THE COURT: It will be admitted in evidence with that understanding.

(Map referred to admitted in evidence as defendants' exhibit "18")

Q. (Mr. Peters.) Mr. Hallahan, this is for the 1914 ownership assessment?

A. Yes, sir, there has been no change in the ownership.

Q. And the assessments which are indicated here are the 1914 assessments?

A. The assessments indicated there are the 1914 assessments.

Q. And the assessments for 1912 and 1913 are now shown?

A. Not on that map.

MR. PETERS: The other zones are all similar, aren't they. There is no question about them?

MR. EWING: I think they are.

MR. RIDDELL: Here is zone 3.

MR. PETERS: There is a discrepancy in all of them. These zones, this is zone 2 and this is zone 1.

MR. RIDDELL: And that is zone 4.

MR. PETERS: Our 4 is this large one below.

MR. RIDDELL: It is our 3. Had we better not change your numbers at this time to correspond with ours?

MR. FROST: It is absolutely immaterial, except if we do that you change the numbers in the exhibit in your complaint. You prepared those that you were going to number them as exhibits. You have it in your complaint.

THE COURT: As long as the testimony went in with that numbering, as long as all the testimony has gone to the exhibits this exhibit now offered and the complaint should be amended to conform to this testimony.

MR. PETERS: Yes, your Honor.

MR. FROST: We are very glad to do that.

Q. Mr. Hallan, step down to the map. Will you explain to the court what the various colorings and designations mean on there?

A. The different colorings represent the different owners.

Q. Start in with zone No. 1 at the east end; what is the color in gray?

A. That is the first in black represents the Puget Sound Mills & Timber Company.

Q. Following that West?

A. The red represents the Milwaukee Company.

Q. Does all the red in there indicate the same ownership?

A. Yes, sir. All the red indicates the same ownership as the Milwaukee land company.

Q. The next?

A. The next coloring is what is known as the Merrill & Ring tract.

Q. The yellow?

A. The yellow coloring with the red cross represents the C. A. Goodyear Lumber Company.

Q. And the blue?

A. The blue, I believe, represents the Illinois Timber Company, where it appears on the map.

Q. What is the holdings in the zone that is now known as No. 2, with the pink, with the red across?

A. That is the Bradley Estate Company.

Q. And this out here, I don't know what you call that color—the bluish green; does that represent the Henry & Larson Lumber Company?

A. I believe it does.

Q. And the sand color, with the red across?

A. Represents the James W. Bradley.

Q. And the bright blue in zone No. 2?

A. The very bright blue, the Illinois Timber Company. I gave that before.

Q. I believe you testified that all this portion of Clallam County is substantially a solid forest of timber?

A. Excepting the unsurveyed mountains.

Q. Is there any considerable amount of agricultural land in the west end of the County?

A. Very little, except at Forks Prairie, Quillayute Prairie, and another small prairie a little to the north.

Q. How extensive are those prairies?

A. They are not very extensive.

Q. When I said "this portion" I mean the lands embraced in these zones shown as zone No. 1, 2, 3, 4, 5, and 6; you say that those are practically a solid body of timber; that it is all timber country in there?

A. Practically, yes, sir.

Q. You say that you were in charge of the cruises of timber of Clallam County that were made?

A. Yes, sir.

Q. Haven't you records of that cruise here?

A. Practically, yes, sir.

Q. That is, you have the official records of that cruise, have you not?

A. The transcribed record.

MR. FROST: If your Honor pleases, we should now like to introduce in evidence the records of the County cruises, with the understanding, however, that these are public records, and we may be permitted to substitute, if the Court desires, a certified copy, or transcript, of these records.

MR. PETERS: That is perfectly satisfactory to us, with this understanding; that such transcript shall be furnished upon the demand of the plaintiffs, if such, by reason of the status of the case becomes necessary for the consideration of the case by the present court or any court in review. I want to guard against this possibility; that if we should desire a record made up that they have we should not be hampered with the question of ourselves having to advance the cost of supplying this record and recovering from the defendants abiding the final determination of the costs in the case. That if we desire a transcript of these records that they must be furnished (in view of the Status of the case) that they must then be furnished by the defendants at its expense as a part of the record; otherwise the testimony will not be considered.

MR. FROST: That is entirely satisfactory to us.

THE COURT: You are so instructed.

MR. FROST: These are the official records of Clallam County, and are known as timber records, Vol. 1, and Timber Records, Vol. 2 of Clallam County, and they are offered in evidence as exhibits 19 and 20.

THE COURT: Exhibits 19 and 20 may be admitted.

(The two cruise books marked defendants' exhibits "19" and "20" respectively, and received in evidence.)

Q. Now, Mr. Hallan, I wish to ask you to point out to the Court and explain to the Court how this

cruise was made and these records were prepared and the information and detail that was given upon the record, and in that connection I would like to be permitted to place a record on your Honor's desk so you can examine it.

MR. PETERS: If your Honor pleases, in order that we may keep the transcript of this case in an orderly fashion, it seems to me—and I therefore qualify the admission of these records—if they are to be placed in evidence here as in their entirety, as the two volumes—I have no objection to the information contained in these volumes being offered for the same purpose as the original volumes, I take them to be the original volumes, with the right to substitute transcripts, but I do not think it is proper to introduce the entire volumes, because we do not know what they contain. My idea would be that there is no objection to their competency, and that the witness may refer to such pages, or to such records, such pages of the records as he desires. I take it it would be the same way if in a case in ejectment counsel would bring down one of the records of all the transcripts he has in the certain volumes and place that volume in evidence. We can't tell what may be binding upon us; that which we know nothing about. I have no objection to them taking these records and putting them before your Honor and referring to such and such a page, and such and such a section, and have that go in. I do not want the records to go in wholesale because our attention may be called to what occurs on page 120, and after the evidence is closed we find that 120 contains something we desired to inquire about and meet.

MR. EWING: That is all right. These go in for the purpose of illustration.

MR. RIDDELL: We want the whole thing to go in.

MR. FROST: If your Honor pleases, we will be perfectly frank about these. This assessment, as an assessment of Clallam County of that portion of the timber lands in Clallam County in 1912 and 1914,

having been assailed, and we desire to show to the court by these records, to produce to the court, that the court may inspect them, how carefully and fairly and completely the examinations were made, and upon what information the assessing officers based the judgment that they formed in placing the value they did upon lands. In other words, we have these in here for the purpose of placing before the Court the same things that were before the County Assessor and the Board of Equalization, which enables them to arrive at the values of this timber and other property in Clallam County.

And at the close of this case we desire to make comparison as to the quality and character and quantity of the timber of the different owners in different zones, showing that the timber in one zone is not over assessed as compared with another zone, and for that purpose we desire to take the holdings of zone 1, and compare with the holdings of the plaintiffs in this case, and we would like to have the whole record go before the court, permitting the court to see on what information the assessing officers acted.

MR. PETERS: Now, then, at the present time these two volumes are offered as in their entirety as exhibits in the case, their written records. Unless the thing is qualified at this time, everything in there is taken as evidence for the defense. We do not know what explanation or qualification would be desirable with respect to some of the information contained in here. If it becomes competent with reference to the lands of the Illinois Company or other lands in various claims of the Milwaukee Company, we haven't brought this in yet. However, if they should be competent in that case it might be proper to introduce the pages, the sections that refer to those lands, but they should be called to the Court's attention and to our attention at the time they are introduced.

THE COURT: It is apparent to me that this particular—your claim of fraud is an arbitrary discrimination which amounted to affirmative fraud; that any evidence on the other side going to establish the

thoroughness and conscientiousness with which the inquiry was made as being a basis for the exercise of the lawful discretion, that they would have a right to go as far as they wanted to in building up such a case, and that might include all the land in the County, as far as that is concerned. But it is as Mr. Peters points out, before the end of the defense the particular pages of the record upon which you rely and to which you expect to call to the Court's attention in argument should be pointed out, so if there is any rebuttal of that, Mr. Peters in his side of the case would have ample opportunity to rebut; instead of when the case is closed to have you call attention to something that is not mentioned when these books were entered.

MR. FROST: I am frank to state that I presume we will not refer to over one or two pages in the book; but we want to get the books before the Court, that the Court might ascertain for himself the character of the information these men had before them when they passed judgment upon these values, and we shall point out a section or two. And we have to go into our case, because we have tabulations that have been carefully prepared by Mr. Hallahan, the County Assessor that will show the relative stand of timber, and the relative grades which we expect to offer in evidence, and copies of which we will supply to counsel.

MR. PETERS: Then it seems to me that we ought to stop now and consider it very well, because there are only a few pages to be offered by defendants. Here is something that will run into thousands of dollars if we have to supply this and take this case up, and it would cost thousands of dollars to make the copies. The Circuit Court of Appeals would not consider a case in equity unless every bit of the testimony is taken up.

MR. EWING: You have admitted the cruise, and we have admitted the cruise.

MR. PETERS: Suppose you have admitted the cruise, and Mr. May of the May Lumber Company comes and gives information about his timber; he has not even called attention to it. It is not proper for

him to be brought in, in his case, because there is the whole history of it. There is the description of it as detailed as the cruiser could possibly give who has been down there on the land, everything about it, and we want to have our attention called to it now, so we can meet it. Why, Mr. Frost, if there are but a few pages you want to call the Court's attention to, you proceed in that way, and if you find it becomes necessary to introduce the whole volume you must bring it up again.

MR. EWING: We can't tell you what pages we want in advance of the examination of all our witnesses.

MR. PETERS: I object to putting it in evidence in this wholesale fashion. These are the genuine volumes of these cruises, and we concede that such part as may become competent and admitted may be supplanted by certified copies as outlined and agreed to, but we object to introducing the entire volumes in this wholesale fashion as incompetent.

THE COURT: I think the defense has a right to put these volumes in, but I would suggest as a way out of it, that it is very apparent as to the enormous expense entailed on either side in the event of an appeal of this case. It seems as if certain pages were offered specifically, and then a stipulation made that so far as all the other lands in the County you must, by index, be able to arrive at the same pieces of land, that the same information shown in the record is information gathered and acted upon by the officers in fixing the assessment of these other pieces of land.

MR. PETERS: That is entirely satisfactory, and it seems to me that would answer for the purpose of the record fully, and these books may remain for the purpose of the Court in this case.

MR. FROST: As I stated before, the probabilities are it will not be necessary for us to refer to more than one or two pages, but the prime purpose of putting these in is to offer the best proof possible of the thoroughness and the care and painstaking thought that was given to the cruises and to furnish the Court

with the same character of testimony that the Board of Equalization and the County Assessor had in enabling them to arrive at the value.

THE COURT: As primary evidence, to my mind, you have a right to put in these whole books, and it would be very embarrassing and expensive to either side who lost this case to take it up. But you should make some stipulation about the number of other pieces of lands, and of the books, and something of that kind to summarize.

MR. FROST: If we have our right to offer the whole volumes in evidence, we will at this time be glad to adopt the suggestion of the court.

THE COURT: Try to agree during the noon hour on a form of stipulation to cover that so there can't be any room to disagree about the stipulation.

MR. PETERS: All right.

Q. (Mr. Frost) Mr. Hallahan, will you take this volume and point to section 31 in township 30, north of range 12 west, which is the land of the plaintiff, the Clallam Timber Company in this complaint, just explain to the court how this was made. What does one of these small subdivisions represent?

A. The small sub-divisions represent a ten-acre tract.

Q. And the designations of those is the diagram or map in the upper left hand corner of the page?

A. Yes, sir.

Q. What does the letter F represent; is there a letter F?

A. Fir.

Q. The figures following that represent what?

A. 50 trees.

Q. It represents the number of trees on that 10 acres?

A. Yes, sir, the number of 50 trees.

Q. And following this character, what do the next figures represent?

A. The next figure is the figure A, a small a in there representing the average number of feet board measure contained in those 50 trees.

Q. The average number of thousands of feet, you mean?

A. Yes, sir, in each tree.

Q. Then, in other words, in this ten acres shown you would have 50 fir trees of the average of 15,000 feet to the tree?

A. Yes, sir.

Q. And the next letter is the same?

A. The next letter is the same; that means fir again; but of the smaller stage, the average running smaller.

Q. And this figure would be what?

A. That would be 15 and 8,000.

Q. That would be 15 fir trees?

A. At 8000.

Q. The next letter?

A. The next letter is spruce. There is 4000 feet in that one tree.

Q. The next letter?

A. That is C, which represents cedar, which there is none on that ten acres.

Q. The next letter?

A. Hemlock, H; 50 hemlock trees averaging 2,000 feet per acre.

Q. Does or does not this cruise represent the tree count upon each ten acres in each section?

A. Yes, sir.

Q. Following along to the next diagram near the right center of the page on the top, what have we here?

A. This is lot 2 of section 31.

Q. That represents what?

A. That represents in this lot 2—

Q. Forty acres of land?

A. No, I would not say as to that.

Q. It means what is commonly called 40 acres?

A. It may not in this case. There are lots 1 and 2 there, and probably there are 2 lots in one 40 there.

Q. To make this clear, what have we in the center?

A. This is forty acres.

Q. Isn't it true that the timber, the cruise is totaled up for each forty acres?

A. Each forty acres, or each lot as they appear in that section.

Q. Then taking the northeast quarter of the northwest quarter, what do we find there?

A. We find 5,655,000 feet of fir logs, of fir timber.

Q. And the next?

A. The next we find 45,000 feet of spruce.

Q. And following that?

A. Following that is 890,000 feet of hemlock, with a grand total of all of 6,590,000 feet.

Q. What do these characters represent H-P?

A. H-P represents hemlock piles, or poles, either one, and there are three of them.

Q. The next represents what?

A. H-T represents hemlock ties, and there are in number 125 in the forty acre description.

Q. Then following right along on the top of the map, in the right hand upper corner of the map we have in another plat; state to the court what that is?

A. That is a topographic sketch made by the cruiser in the field of each forty acres there, a double run. In other words, the cruiser started here at the corner, east, the corner here, and back up through the center in these ten acre tracts.

Q. Those are ten acre tracts?

A. Yes, sir, those are ten acre tracts, and traveled one mile and tied up to this corner up here by finding the stake, if possible. He doubled back and came down here and by traversing the section that way, or the reverse way, this way, he would have gone through each forty acres twice.

Q. He would have gone through the center of each ten acres?

A. Yes, sir.

Q. What do the figures on the ten acre tracts represent?

A. The marks in the sketch represent the elevations taken by aneroids.

Q. This is swampy?

A. This green little bushy stuff inside refers to swamp. This dotted line along here is a trail that traverses the section east and west.

Q. Now take this course and come down, what have we here first?

A. We have the total number of feet of 107,885,-000 feet, board measure.

Q. As the total amount of that section?

A. As the total amount on that section excepting this number here.

Q. This is the grand total here, am I correct about that.

A. I think not; that is included.

Q. Does this show the total amount of feet of each variety of timber?

A. Yes, sir.

Q. In making your assessments there you also showed the down, dead timber?

A. Yes, sir.

Q. In making your assessment did you take that into account?

A. That has not been assessed. The fir has not been assessed. The dead and down fir has not been assessed; it is not considered at all.

Q. Coming on down we find the heading here "Percentage of different grades of logs?"

A. Yes, sir.

Q. And then the sub-heading, "Grade"?

A. No. 1, first class logs, No. 2 merchantable.

Q. Taking the fir, what would we have?

A. Forty per cent No. 1 fir; forty per cent merchantable, and twenty per cent No. 3 logs.

Q. And the same classification holds as to the spruce?

A. The same classification holds as to the spruce and hemlock; but different figures, of course.

Q. Then following on down on the right hand side of the page we have under the heading of "General description" what?

A. We have the character of the surface.

Q. As to its roughness, and smoothness?

A. Yes, sir.

Q. What next?

A. The character of the soil, general description.

Q. Next?

A. The character of clearing, improvements, if any, and the general classification of the lands.

Q. Coming over again to the lower left hand corner of the page we have under the heading "Character of Timber" what?

A. We have fir, which gives the quality, old growth, good quality, averaging 160 feet long, smooth and sound, excepting that about 25% shows signs of ground rot.

Q. And we have that same description of all of the timber, have we not?

A. The balance of the different varieties are classified the same way.

Q. Come under the head of "Logging conditions" what do we find?

A. We find the character of the conditions, the ground is the very best. The surface is nearly level, and undergrowth light; very few windfalls; timber to be handled with railroad spurs and donkey engines west to the Sol-Duc River and thence down the river by railroad.

MR. FROST: I think that is all, if your Honor pleases, except that we will turn at random here.

Q. Mr. Halahan, without reference to the ownership I desire to call to your attention section 15, township 29, range 13, and to the map in the upper right hand corner because this shows a different condition. What does this coloring in yellow represent?

A. That yellow or red coloring represents burnt land, land that has been burnt over.

Q. Is it true that all the timber lands in Clallam County were cruised with equal care?

A. I believe so, yes, sir.

Q. You have the same report of the same conditions, the information concerning all the timber lands in that County?

A. The same information as to all the timber lands west of range 9 were cruised under the direction and supervision of Mr. Duvall. He had absolute charge of the cruising in the field, and the work, I believe, has been very correct and complete.

Q. The valuations placed on the timber land in Clallam County for the year 1914 by yourself as assessor were made upon the basis of these cruises, were they?

A. Absolutely.

MR. FROST: If your Honor pleases this paper diagram will be used at this time to refresh the mind of the witness and we will desire to introduce all we will offer to the Court a completed list, a type-written tabulation that is exactly like this. This contains a lot of erasures, and we are having one prepared.

MR. PETERS: What is it, Mr. Frost?

MR. FROST: It is a tabulation showing the name of the owner, the assessment zone in which his holdings are located, the number of feet board measure of the holdings, the average stand of timber board measure per acre and the quality of timber giving the percentages of No. 1, merchantable and No. 3.

MR. PETERS: Let's see it. (Showing paper to counsel)

MR. FROST: We are only using this at this time to enable the witness to refresh his memory.

MR. PETERS: Is this portion that is lined out to go in, Mr. Frost? (No response)

MR. PETERS: Mr. Hallahan, didn't you get this up yourself?

A. Yes, sir.

Q. Who assisted you in it?

A. I had some assistance from a girl who is working for me, that has worked for me in the office for three years. She assisted me. There were a good many helping me check. I checked all the figures myself.

Q. Where was she taking this from?

A. Taking them from the records, the timber records.

Q. From these records here?

A. Yes, sir, from these records here, excepting the number of feet contained, and the number of acres contained in your descriptions of the several zones. I took them from your complaint. I did not figure those myself, I took them from your complaint, the number of acres that you described in each of the zones, and the total number of feet. They copied them from your complaint. The others I ascertained by tabulation.

Q. You have, for instance, the name of the owner, the Clallam Lumber Company, in zone No. 1?

A. In zone No. one; that would reverse your zones. You have changed them on the map here again.

Q. As it stands on this list at present, however, it appears the zone number, the total number of feet board measure in the holding is 1,231,286,750?

A. Yes, sir.

Q. Where was that taken from, where did you get that from?

A. From your complaint, the figures in your complaint.

Q. The number of feet board measure you took from the complaint?

A. Yes, sir.

Q. Is that true throughout with reference to the Clallam Lumber Company?

A. That is true of all your holdings.

Q. And the Ruddock and McCarty?

A. The Ruddock and McCarty.

Q. And the Goodyear lands you estimated how much?

A. 3,130,750.

Q. Where did you get that from?

A. I took that from the record in that zone.

Q. From these records?

A. From these cruise books. I took a description of their holdings that they had and then I took that

off on an adding machine as I went along and checked the work.

Q. And that was, of course, done with a view of putting the matter in finished shape for your testimony in this case.

A. I presume so.

Q. This has been done recently; it was not done for the purpose of assessments a couple of years ago; but was done recently?

A. Yes, sir; it could not have been done a couple of years ago, because the cruise was not complete to do it then.

MR. PETERS: I do not think this will be competent. I will hand it up to the Court.

THE COURT: It was only for the witness to refresh his memory with, I understood.

MR. PETERS: Your Honor will observe that it is not in the nature of an instrument to refresh one's memory, because they are not transactions he had, and of which he would have himself individually any recollection, personally, without the memorandum. What it is, it is a compilation of data from other people's knowledge and information.

THE COURT: Your objection goes back to the point that it is not the best evidence?

MR. PETERS: Yes, sir.

THE COURT: The books are the best evidence, and you object to the books.

MR. PETERS: Here is what I object to, the quality of each, and the amount in percentage, for instance fir 41,25,13,44, and 48. Perhaps I better take that cruise, a different cruise. In one zone, the quality of timber fir had 35%, merchantable 42%, and No. 3 23%. That is a matter as to which we asked the cruiser, Mr. Duvall, who had actually been upon the ground and who had made the examination. Of course, this man is taking that from the information of another. We are bound by the cruise, the amount of the cruise which we have admitted in our complaint, but as to the quality and character of the timber, that is a matter that ought to be proven. We

have endeavored to prove it by some one who has been on there and seen the timber. For, instance, your Honor will recall that when we put on Mr. Rea, we said, "Did you go down there? You simply went down in an automobile, and you did not see the quality of this timber?" So he testified to the grade of it, No. 1, merchantable, and No. 2, and they excluded him practically on the consideration of that, however. Here is a man that takes somebody else's total. If he is allowed to put this in it becomes the testimony of another, and what we want to get at is testimony from somebody that went down there and examined it, so we can cross examine him and see what he discovered when he went down there. I think this would be misleading and not competent evidence.

THE COURT: You have your choice between something like that and these books. If they made tabulations from the books—the books themselves are the public records, and they are evidence, and you objected to the books because they are so bulky, I have tried to induce counsel to stipulate that in order to obviate the necessity of putting in the books. Then you objected to the compilation and tabulation from the books. We will have to go back to the books.

MR. EWING: Mr. Peters loses sight of the fact, and your Honor must have in mind, that this is Mr. Duvall's cruise, that this computation is made from the cruise of the very man they asked about the percentages. We are taking his written record and making a computation from his record, their own witness, the man who made this cruise.

MR. FROST: It goes further than that.

THE COURT: That would settle this matter of the books. You will have to settle this matter of the books before I can rule on the tabulation.

MR. FROST: They have admitted the cruise twice in open Court. They have admitted the cruise and consented that the cruise go in. Mr. Duvall testified that that cruise was correct as to the physical characteristics of the land, the topography of the country, the character of the soil, the quantity, and the qual-

ity, and the grades of timber standing upon it, and that is about the only proof that we have concerning it. Now, the cruises having been admitted by counsel, they admit it for all purposes. A cruise that does not show the character, quality and the physical characteristics of the country upon which the timber stands would not be worth the paper the cruise was written on.

THE COURT: Since these books are not in the Court does not know what the cruise is, and the Court does not know what they have admitted.

MR. FROST: We are ready to offer the books, but this is a simple way out of it. Here is a tabulated statement which shows the number of acres held by Ruddock and McCarty for illustration, which shows the number of feet per acre, and shows the grades and quality of that timber.

THE COURT: But the objection goes to this. Mr. Peters objects to this tabulation because the witness has made the tabulation from somebody else's reports, and he therefore is trying to testify to the contents of the written report, and that written report is the best evidence and that best evidence Mr. Peters objects to on account of the bulk. I will sustain the objection, and you will have to go back and offer all the books unless you can agree to something abstracting the books, the contents of them.

MR. PETERS: Perhaps, during the noon hour we will get at that. Your Honor can see that it is a tabulation of the entire scope of their defense as to the quality and character of that timber. I feel satisfied that it is not competent. Still, I would go far to admit it if it is going to help in the expeditious presentation and intelligent hearing of this case, but I could not take the chances now.

THE COURT: It would seem that you can take some particular holder and check these books with that tabulation, just like the boss cruiser takes the cruise of one of his sub-ordinates.

MR. PETERS: We can, but here is one bunch of timber of the Clallam Lumber Company—there is 18,000 acres. They figure out the percentage as 35-

22-43. I suppose they must have averaged that from over all the sections in that 18,000 acres.

MR. FROST: If you desire we can give you the adding machine's tabulations. Here they are.

MR. PETERS: We certainly could not try this case with an adding machine. That is what it would amount to.

THE COURT: Suspend this matter then, until after lunch. Maybe you can come to some agreement. Or, you may go ahead until 12 o'clock on some other matter.

Q. (Mr. Frost) (Presenting another sheet to the witness). Mr. Hallahan, can you identify that sheet?

A. Yes, sir.

Q. What is that?

A. That is an abstract of the assessment of Clallam County.

Q. What does that show?

A. It shows an abstract of the assessment for that County for 1912, 1913 and 1914.

Q. Did you prepare this tabulation?

A. I copied it from the records in the assessor's office.

Q. And it is a true and correct abstract, is it?

A. I believe it is.

MR. FROST: If your Honor pleases, this is an abstract such as is prepared every year by the County Assessor showing the total assessment of the County, the number of acres of timber land, the valuation, the number of acres of other improved lands, and their valuations, and the average equalized value of unimproved lands, the number of acres of improved lands, and the valuations, and the average equalized value per acre; the value of improvements, the average equalized value of improvements per acre, and the total value of improvements as to land, the equalized value of the land per acre, and giving the value etc. of city and town lots. (handing paper to Mr. Peters)

CROSS EXAMINATION

BY MR. PETERS:

Q. Mr. Hallahan, how did you get at this abstract of assessment?

A. I have got the original upstairs, if you want to see it.

Q. That is all right, so far as that is concerned, but how did you get at this tabulation?

A. This is a tabulation required by the State Board of Equalization each year of the County Assessor. This is a copy, except one column; that is like the abstract sent to the State Board of Equalization each year.

Q. The total number of acres of land in the County subject to taxation 528,330.60; does that mean of land?

A. That means every piece of land on the rolls.

Q. That includes the lands covered by timber or not?

A. Timber and everything, timber, agricultural, and everything.

Q. It does not cover the assessment of cruised timber, does it?

A. Yes, sir; it shows everything that is in the tax roll in the land cruise, and classified as "acres."

Q. The total assessment of the County, what does that mean?

A. That means the grand total of assessments of real property of the County for that year, 12,312,000.

Q. Real property?

A. Yes, sir.

Q. And the next, the number of timber acres?

A. 372,051.

Q. Is that included in the 528,000?

A. Yes, sir.

Q. The land valuation?

A. That is the valuation placed upon the timber.

Q. That is not the valuation placed upon the—
That is the valuation placed upon the timber as cruised?

A. Yes, sir.

Q. Both acreage and timber standing thereon?

A. Both the acreage and timber standing thereon, yes.

Q. And this?

A. That is unimproved acres; that would be what we call wild land.

Q. Logged-off land?

A. Logged-off and wild land and everything else.

A. And that is the total valuation?

A. Yes, sir.

Q. And that is not included in the 528,000?

A. Yes, sir, all this together make up the grand total.

Q. The average value, the equalized values?

A. Yes, sir.

Q. That is the valuations equalized by the County Board and not by the State Board?

A. That is an abstract submitted to the State Board.

Q. "Improved acres", what does this mean?

A. 52,071.99 improved land acres.

Q. That is the valuation?

A. That is the total valuation of the improved acres, and that is the average per acre.

THE COURT: We will take recess until 2 o'clock P. M. this afternoon.

September 7, 1915, two P. M. trial resumed pursuant to recess, all parties present.

MR. FROST: If your Honor pleases, I think counsel has not yet come to a conclusion about this statement as to the character and quantity and quality of the timber of these various holdings. May we let that go for a little while?

THE COURT: Yes; if you can get together; This is the idea, if you cannot get together the Court will be ready to rule it out, when you find you can't agree.

MR. FROST: It is to facilitate the Court.

THE COURT: If the books were in evidence they would be perfectly proper as to the tabulations to enable the Court to understand what had been brought

together out of the evidence as already in. If the books are not in evidence it is clearly improper because it is not the best evidence. If the books were in evidence, the Court would take it like you would put it in a brief, like you would put it together yourself.

MR. PETERS: That is the way I take to be the effect of it and not as a matter of refreshing the recollection of the witness. It is really a compilation of evidence supposed to be in a shape, which is often done by counsel, and is permissible in that case; not even as the testimony of the sworn witnesses, but to enable the Court to see the evidence in tabulated form. The difficulty in this case is right here, if your Honor please, at least in one respect, and that is that we will take on section, section 19, of township 30, range 12 west. We only own eight out of the forties there, and they have taken the run as tabulated on the entire section, and in another instance we only own five of the forties out of the entire section. This tabulation is based by them upon the section as a unit. In many instances that may make, undoubtedly, a very considerable difference. The books themselves show the matter accurately taken, not only as to forty acre tracts, but to ten acres, so it is possible to calculate it upon a ten acre tract. If it was so done, and the Court can get the lands tabulated as against the Goodyear people say, or ours, that is the interior timber, and the exterior timber were placed on the actual holdings of ten acres it would be a fair estimate. But where we are charged with five of the forties on the run of the entire section it may be very unfair. And I do not see how we would reach it after this tabulation goes in, save by ourselves putting in these books and going to the individual sections themselves. For instance, take here, where a man may run right through the holdings and divide between these two zones, that would be the question of difference, bringing out this same point, not only the difference in zones but the difference in holdings. Wherever we do not own the entire section to be charged with the run of the entire section, it has

to be explained, and we will have to come back into Court with all these books to explain it.

THE COURT: If you can agree, you may call this up later. Make every effort you can to work out some result which would not be too cumbersome to the side appealing.

MR. FROST: We stand ready at any time to offer these books in evidence.

THE COURT: Is there some phase of the case that you can take up now?

MR. FROST: We will go ahead with the direct examination of Mr. Hallahan.

DIRECT EXAMINATION (Continued)

MR FROST:

Q. Mr. Hallahan, did you as County Assessor make a tabulation showing the amount and valuation of the different classes of property in Clallam County?

A. Yes, sir.

Q. Refresh your memory with this tabulation, will you read that purported classification for the year 1912?

MR. PETERS: I object to that as incompetent.

Q. Your assessment for 1912, the abstract assessment rolls for Clallam County for the year 1912?

A. In the year 1912 there was returned 528,130.6 acres of land.

Q. Does that include all land of every character and description that was upon the assessment rolls of Clallam County for that year except the platted lots, or town lots?

A. Yes, sir, excepting perhaps there might be within the town stuff that might be called acreage, that is, blocks.

Q. Did that include all the acreage property proper as distinct from town lots and blocks?

A. Yes, sir.

Q. Go ahead and read the next?

A. Total assessment of the County for that year was \$12,312,973.

Q. The next tabulation?

A. The next tabulation is the number of acres of timber lands, 372,051.19 acres.

Q. And the value of that?

A. The value placed on that for the years was \$8,949,325. The next item is unimproved land, all other unimproved lands, 140,806.88 acres. The assessed valuation placed on that was \$978,080.00; the average equalized value on unimproved land per acre was for that year 6.94 dollars.

Q. The improved land acres?

A. 15,371.99; the valuation placed on the land was \$472,290.00; the average value, equalized value of improvements——

Q. Have you the average value per acre first of the improved land?

A. Yes, sir, the average value of improved lands was \$30.91, and the value of the improvements on the land for that year was \$151,985.00, and the average equalized value of the improvements per acre was \$9.95 per acre.

Q. The next item is——

A. The total value of improvements and land together which was \$624,075.00.

Q. The average equalized value of land and improvements per acre was \$40.86?

A. Yes, sir.

Q. That is all improved lands?

A. Yes, sir.

Q. City and town lots?

A. City and town lots, value of real estate for the year 1912 was \$1,127,968.00; the value of the improvements on those lots was \$218,060.00; the total value was \$1,348,028.00.

Q. That is the total value of town and city lots?

A. Including improvements?

Q. Including improvements.

A. Yes, sir. The total personal property, less exemptions, was \$418,465.00.

Q. Now, Mr. Hallahan, will you go over that——

MR. PETERS: Wasn't there a separate assessment for the banks?

MR. FROST: That is included in the personal assessment, isn't it?

MR. PETERS: He has no separate statement for that?

MR. FROST: There is a separate statement for that.

MR. PETERS: I ask that the entire abstract be read.

MR. FROST: We are not offering the abstract in evidence.

MR. PETERS: I admitted it before, an official compilation under the provisions of the Statute, and ask that it be admitted.

MR. FROST: Then we offer the abstract in evidence.

THE COURT: It may be admitted in evidence. (The abstract referred to marked defendants' exhibit "21" and admitted in evidence.)

MR. FROST: We would like to have him prepare a typewritten tabulation of this so that we may all have copies.

MR. PETERS: Certainly.

Q. Will you read this abstract for the year 1914?

A. In the year 1914 the total number of acres of land in Clallam County excepting city lots was 529,920.06; the total assessment of the County \$14,576,197.00, number of acres of timber land, 356,058.15; valuation, \$10,062,205.00; all other improved land, 15,739.67; valuation, \$901,475.00; the average, or equalized value of unimproved lands per acre for that year was \$7.78 per acre; improved lands number of acres 18,072.26; the valuation, \$594,670.00; the average equalized value of the improved lands per acre was \$52.90; the value of the improvements on the improved acres was \$181,635.00; the average equalized value of the improvements per acre was \$10.05; the total value of the improvements and lands was \$746,305.00; the average equalized value of land and improvements per acre, \$41.29. City and town lots, value of real estate, \$1,803,642.00; value of improvements \$311,215.00; and the total value \$2,114,957.00;

the total personal, less exemptions was \$721,385.00. Do you want me to read the Banks?

Q. Go ahead.

A. All of them??

Q. Just finish the statement.

A. Assessment of the Banks for the year was \$9,200.00.

MR. FROST: If your Honor pleases, we ask leave to withdraw this long enough to have typewritten copies made of it.

MR. PETERS: No objection.

Q. (Mr. Frost) Mr. Hallahan, in making the assessment of the other land in Clallam County as distinguished from the timber lands, did you have maps and data prepared showing the quality, the physical characteristics of this land?

A. Yes, sir.

Q. I will ask you if this book entitled, "Grade Book Acreage of Clallam County", is the official record of that County, containing that information?

A. Yes, sir, partly, not all in that book.

Q. It is not all in that book?

A. No, sir.

Q. There is some that is not in that book?

A. It is in another book.

MR. FROST: If your Honor pleases, we are confronted with the same problem again that confronted us in this; We desire to offer this in evidence for the purpose of showing the character and quality and physical characteristics of certain of the farm lands, and other lands in Clallam County, all of them; but particularly for the purpose of informing the Court as to the means and methods and character of the information that the assessor and assessing officers of Clallam County had in determining the value of the property.

THE COURT: Do you offer the book?

MR. FROST: We apprehend that the same question will arise. This is a large volume, and we would like to offer this with the privilege of substituting verbatim copies of any portions of this book that we refer

to, and withdraw the book in the same manner that we offered to prove the timber.

MR. PETERS: On the question of the good faith of the assessing officers, I take it that the information that they had before them at the time would be of importance to the Court, and an inspection of these books as to what they contained would be, of course, a means of showing that. But the books being in evidence, they would be taken doubtless to be in evidence for everything that they contain. The pages will speak for themselves, as if witnesses with tongues. We might as well march up here twenty men and say "Here is what they would say" and we are not even given what the individuals would say, and we are asked to rebut that. We would be utterly at a loss. We are not bound by what is in those books with respect to lands; but the witness has a right to say what he had before him at the time. I have no objection to that. But I do not want to be bound by these books and I do not think they are competent for that purpose, that they speak for the entire scope of this case.

THE COURT: The objection overruled. I have concluded that the best way to get at this record regarding the objection on account of the bulk, I have to make this ruling; Overrule the objection and I will admit the books unless you agree on a stipulation concerning the abstracting of the contents as to special lands.

MR. PETERS: Note an exception for the purpose of the record.

THE COURT: Exception allowed.

MR. FROST: Then this volume, entitled, "Grade Book Acreage of Clallam County," Nos. 1 and 2 are admitted?

THE COURT: Before you make your offer it should be supported by some evidence that the witness prepared it. I do not understand that is the one he testified about the other day.

MR. FROST: No, if your Honor please, this cruise was the non-timbered lands of the County.

MR. RIDELL: Do you want the witness to testify these are the official books of the County?

MR. FROST: These two books are offered in evidence.

THE COURT: They may be admitted.

(Books referred to are marked defendants' exhibits 22 and 23, and received in evidence.)

MR. FROST: I offer in evidence the abstract.

THE COURT: It may be admitted.

(The abstract referred to is marked defendants' exhibit 24, and admitted in evidence.)

MR. PETERS: I understand that the cruise books are now admitted with the same ruling as respect to the grade books of the land?

THE COURT: Yes. (Referring to exhibits 20 and 21.)

THE COURT: They are admitted.

MR. PETERS: Note the same objection.

THE COURT: Objection overruled. Exception allowed.

MR. FROST: Now, Mr. Hallahan, will you refer to the township and range in which the town of Sequim, in the neighborhood of Sequim, and we are referring now to the lands concerning which the witness Ware testified—— I would like to put this book on the desk of the Court to inform the Court and give the Court the means of information that the County Board of Equalization had. We want the Court to know how thoroughly they did their work in Clallam County (Referring to grade book No. 1).

MR. FROST: Referring to sections 17 and 20, town 30, range 3 (referring to exhibit 22)

MR. PETERS: Are those books paged?

WITNESS: No, sir, they are arranged by section, township and range.

Q. (Mr. Frost) Now, Mr. Hallahan, will you explain to the Court what this topographical sketch contains and means?

A. This section is described in two ways, like all the other sections; There are two sets of characters down here that will briefly set forth the character of

the land at a glance by committing these to memory; No. 1 is black sandy or loam, as it appears here, and they are comparatively level, for instance, there is A.1 which means black sandy, or silt like loam, and comparatively level, and there are 33½ acres of that character of land in that forty acres of description. To get a further reading of the same description it would be in the southwest of the southwest quarter.

Q. That is ten acres, is it, is that a ten acre tract?

A. Yes, sir, this is a ten acre tract.

Q. This is the whole section? (Showing)

A. Yes, sir.

Q. Describe the land?

A. That covers the forty acres cross ways.

Q. The southwest of the southwest?

A. Yes sir, the fenced acres along here and up here and crosses over here, and here is an orchard, and here is a little house, and here is a fence around the house here, and there is another house, and a barn here.

Q. It is more fully described here?

A. Yes sir, it is more fully described here.

Q. What is this, Mr. Hallahan?

A. That is a fence and a lane down there.

Q. And following that?

A. There is a pasture here, and there is a little sidehill here, a kind of a bench, where these dotted lines are, a bench.

Q. This is an irrigating ditch, isn't it?

A. Yes sir. This is a road here, and here is a road.

Q. Go ahead, in your own way then, and give the Court the information.

A. You have asked so much that it would probably take a long time to explain everything.

Q. Explain to the Court what these things mean, and go ahead on the next page?

A. These dotted lines represent slashing, and this is drainage conducting the water out of the land, because it is A-1 most all valley when drained. This is a little building; and here is a road from the main

road into the building. Some of these buildings are described here on this side, the kind of buildings, where they are, how many of them, they are given in number, and each one described, the kind of lumber, the stories, the kind of roof, the kind of lumber in the floors, the rooms, and all the matters that go into a building are enumerated here, the size of the buildings, and so forth, its construction and everything, shingled roof, or otherwise, foundation, whether concrete or rock, or simply blocks; everything that you could think of mostly is enumerated in this compilation of figures over here. This, for instance, the southwest of the northeast is cultivated prairie, rail, board, and wire fence.

Q. (The Court) That irregular mark is the elevation?

A. No, that would be 4-A. It encompasses that acre of land. It would be clear loam, and the A would be comparatively level, as distinguished— here is 4-B here, and C and B two kinds, 15 acres of 4 and C and B.

Q. Explain what C and B mean.

A. It would be these two mixed together; this here.

Q. There in the southeast of the southeast you have 4-F?

A. That is a side hill slope. There are $9\frac{1}{2}$ acres in that.

Q. What is the designation of F?

A. Side hill, too steep for cultivation. That side hill could not be cultivated. It is too steep. We got the number of acres of that side hill right here, nine acres and a half, which in making the assessment we took this forty acres of land and measured up the amount of level land that was in there and took notice of the sidehill, and any other characteristic, and put the value upon each piece separately and added the whole together, and put that assessment upon the forty acres.

Q. Are all of the agricultural and unimproved lands in Clallam County similarly graded?

A. All of the agricultural and unimproved lands are similarly graded up to and including range 8 west, range 2, to range 8 inclusive, west.

Q. And west of range 8 what happened?

A. West of range 8 is taken in the cruise books.

Q. West of range 8 is in the cruise books, in the timber cruise books?

A. Yes, sir, but this same report is going through, but not so elaborate as this. The soil report is not in so elaborately. It would be more timbered. This represents a burnt section, a recent burn, an old burn, a recent burn, a recent, burn, and so forth.

MR. FROST: I think that will be all at the present, Mr. Hallahan, except some more questions I want to ask you later.

WITNESS: This section shows along the river bed and the gravel bars along here. This is the river back here and shows the gravel bars that are practically worthless, where the river overflowed in certain seasons of the year, and we made that reduction and put a minimum value upon the gravel bar, and deducted that from the number of acres. This is the side hill further down. That can be seen from the picture.

Q. Was this land grade book compiled from actual surveys and investigations made in the field upon the land?

A. Yes, sir.

MR. PETERS: This will bring out the question that will come as to the competency of these books along that line; I would like to ask the witness a question.

MR. FROST: All right.

Q. (Mr. Peters) Who made these surveys.

A. The surveys were made by the same people that made the cruise, mostly.

Q. When were they made?

A. The surveys—

Q. When were they made, the surveys, I mean of the agricultural lands, and all the improved lands that you have just been referring to?

A. They were made by the cruisers in the field that had charge of the work.

Q. Did the timber cruisers make a survey of the agricultural lands as well?

A. Yes, sir; but more briefly than these.

Q. More briefly?

A. Yes, sir; more briefly, and under different forms.

MR. FROST: I think the witness misunderstood the question.

MR. PETERS: I think the witness understood the question; what did you understand?

A. I understood you to ask the question if the same method was not applied in cruising the timber land.

Q. What I want to get at is, who made the data, who compiled the date, upon which these books were made up?

A. The several cruisers. Their names are attached to each section.

Q. Did the timber cruisers make the reports for the agricultural lands?

A. Certainly they reported the same thing on the timber.

Q. Let's refer—

MR. FROST: I think I can simplify this.

Q. Did the cruisers make out a report from which this book is made?

A. Yes, sir; the same men, provided they were competent. Some of them, perhaps, were not competent.

Q. When was it they made that out?

A. The dates are given in the book. I can't remember the dates. Each section is dated. It is dated on each sheet and the date shown for any given section.

(Books shown to Mr. Peters by counsel)

Q. (Mr. Peters) Mr. Hallahan, counsel called my attention to section 12, township 30, range 6 west which refers to lot 5, in Kyle's Addition, Inglewood, Crobacher, and Mallett's Addition, what kind of land is that?

A. The land is as it is reported here.

Q. I ask you to tell the Court what kind of land that is?

A. It shows like on the map there.

Q. Look on the map and show where it lies?

MR. FROST: Tell what kind of land it is.

A. Any particular portion of it?

MR. PETERS: I wanted him to tell the Court generally what kind of land this is, whether it is timber land or agricultural land, or prairie land, or city land, or some other kind of land.

A. It is wild land.

Q. Lying right outside of the town of Port Angeles?

A. Outside of the City limits, and some improvements; here the addition is exhibited.

Q. This is sub-divided for residence lots?

A. That was the intention 25 or 30 years ago.

Q. What is portrayed on this page that I have just referred to, section 12, township 30, range 6 West, is the condition as it existed some 35 years ago?

A. Practically, except some timber being cut down; some timber was cut down, and the largest stuff removed and burned for fire wood.

Q. Those dates, do they indicate the time when the section was compiled?

A. That was examined October 13th by John C. Crueger.

Q. Did he make up the notes of that?

A. Yes, sir.

Q. Do you happen to have those notes anywhere?

A. They are not in Seattle; they are in Port Angeles.

Q. Are they filed away somewhere?

A. Yes, sir.

Q. What was done with the notes?

A. The notes were made a matter of record. They were filed as a matter of record, being the original.

Q. What connection did the notes have with this book here?

A. That book was made up from the notes. It is a transcript of the notes.

Q. Did Mr. Crueger report to you these Additions here?

A. Yes, sir. He made out the reports in that way.

Q. He made out the reports after this particular land was sub-divided in that way?

A. No, sir, he did not make out that part; that was colored in afterwards.

Q. That is what I want to get at.

A. That was only a matter of form to put that coloring in there, in looking over the sections you could tell whether it was acreage or platted property.

Q. What did Mr. Crueger's notes show, the information contained on the written page?

A. It showed all the information except the lots and blocks there, in the description of the platted property; he did not report that, because he did not know.

Q. Who extended that information in this book?

A. That information in this book was extended by Mr. Benson who made up the book afterwards. This has not got anything to do positively with the record of the book. It is simply there for information, for general information. If you will look at a section of land you can tell at a glance that there is platted property in there. Then you can go back and look at the platted property in the other books where it belongs. It is a matter that is immaterial in the record so far as the notes go.

Q. It is immaterial so far as the notes go?

A. It is only a guide in there.

Q. But the notes are transcribed on the page on the right hand side here?

A. Yes, sir.

Q. And there is nothing else on this page except what is taken from Mr. Crueger's notes?

A. That is all.

Q. Who was Mr. Crueger?

A. Mr. Crueger was a cruiser, a timber cruiser employed for that purpose.

Q. Employed to cruise timber?

A. Employed to cruise timber and grade land.

Q. Who employed him?

A. He was employed by all, by Mr. Duvall first.

Q. And Mr. Duvall was the timber cruiser, and he is the witness that has been on the stand here?

A. I believe he was here as a witness.

Q. And as I understand you, after these books were made up in this way they were kept in your office?

A. They are not in my office any more. I am not in the office.

Q. During the period that you were there?

A. Yes, sir.

Q. You were assessor, were you not, for the years 1912 and 1914?

A. Yes, sir.

Q. And have been for 1910, have you not?

A. In 1911, 1912, 1913 and 1914.

Q. These books were kept in your office during that period?

A. They were being made up all the time.

Q. And when you went to assess a piece of land you would go to these books and read Mr. Crueger's notes so as to get it just the way that Mr. Crueger had it?

A. We took these books to do our work from, and if it was not all in the books we would compare back to the original notes.

Q. Do you recollect whether any of these books are dated prior to 1913? What would you say was the very earliest of the sheets?

A. The very earliest would be in 1911.

Q. Not prior to that?

A. About May, June or July I think.

Q. And that system has been in the office of the assessor of Clallam County, say from June, at least, since 1911, as far back as that up to the present time?

A. What system is that?

Q. That system of having these lands cruised and the data made of them by such men as Mr. Crueger, and from the notes of Mr. Crueger and the map

and records were made up here and maintained in your office, in the office of the Assessor?

A. Yes, sir.

Q. And when the assessor wants to assess a piece of land he goes to these books made up in that way and gets all the information?

A. That is what I did; I do not know whether anybody else does that or not. That is what I did.

Q. That is what you did?

A. Yes, sir.

MR. PETERS: I move that the books be excluded at the present time so far as the grading of lands and the non-timber lands are concerned on the ground that they are entirely hearsay evidence. Mr. Crueger, or the men who made this data, and compiled them, if he were here with his notes to refresh his recollection, he would be subject to cross-examination to find out the truth and the basis of his information; but he is not here. He takes them up and turns them over to this man and this man comes in here with these books.

THE COURT: We are not trying the absolute verity of these things; but if the assessing officer was mistaken, that is one thing; if there is fraud, that is another thing. The objection is overruled.

MR. PETERS: Note an exception.

THE COURT: Exception allowed.

MR. PETERS: My point is this, to have it before the Court; I do not think for this reason that we are bound by the statements of these books as records——

THE COURT: Your adoption of the cruise, I take it, went to the timber cruise alone?

MR. EWING: I think we might obviate Mr. Peters' objection by a simple question to the witness.

Q. (Mr. Ewing) Mr. Hallahan, were these men here whose names have been mentioned, Mr. Crueger, and the other men employed as cruisers and the men who gathered the data from which these books were made deputy assessors?

A. They were in a sense. They were assessing

officers of the County. Each one of them took an oath to perform the duties of that particular office during the period he was in the field, and if he should for any reason have violated any of the laws of the State while in the field he was to be subject to prosecution.

Q. And these data, including agricultural lands, and other lands, non-timbered lands, and timber lands, were all compiled and collated under your direction while you were assessor?

MR. PETERS: That is leading.

A. Yes sir.

MR. EWING: We will reframe the question if you want us to?

MR. PETERS: Go ahead, no.

DIRECT EXAMINATION

BY MR. FROST CONTINUED:

MR. FROST: Now, if your Honor pleases, we desire to offer in evidence this tabulated statement that the witness identified in his testimony showing the names of owners and assessment zone in which the holdings were located, the number of acres of timber lands and holdings and the number of feet board measure in the holdings, the average stand of timber per thousand feet per square, the quantity of each kind of timber, and the grades of the timber.

THE COURT: Is this the tabulation that was identified by the witness this morning;

MR. FROST: This is the tabulation identified by the witness this morning.

MR. PETERS: We renew the objection along that line, and I would like to ask the witness from what this tabulation is made up?

A. Do you want me to detail to you the method employed in getting that information?

MR. PETERS: Yes, sir, you have, in order to assess, I understand, some detailed memoranda?

A. I had the figures as I made them here as the memoranda. I took for instance about the Clallam Lumber Company, what we called zone 1 at the time, now changed to zone 2—I took a list of their property, a detailed list of their property, submitted it and took

down the sections, townships, and ranges in which they held property, commencing with one particular place and continuing on through. I took that section of land and put the total number of acres on one side of this page, of the section, and then I took the number of feet of fir timber as set forth on the page there, and then I found the percentages of fir, for instance, fir was graded 40 No. 1, 40 No. 2, and 20% No. 3. I then went and found the percentage of No. 1 fir logs that was in that section, applying the same method I found No. 2.

Q. (Mr. Frost) You mean by percentage of No. 1 fir logs, or number of feet of No. 1 fir logs?

A. The number of feet in No. 1, the number of feet of No. 2, and the number of feet of No. 3.

Q. (Mr. Peters) Do you take from your list there—have you got section 19, township 30, range 12 west?

A. Yes, sir.

Q. Would you refer to that?

A. This is section 19, township 30, range 12. the percentage No. 1 logs in that section is 50% No. 1.

Q. Speak louder, please.

A. This is section 19, township 30, range 12. This is 6,212,000 feet of fir timber; that fir timber runs 50% No. 1, 30% No. 2, and 20% No. 3; and the 50% of logs is simply a matter of dividing that by 2, which gives you the per cent of logs.

Q. You divide what by two?

A. It is 50%, or one half of that.

Q. One half of what?

A. One half of the 6,000,000 gives you 3,106,000 feet.

Q. And the same for the 30%?

A. The same way here; I got 212,000 here.

Q. 1,900,000, or something like that?

A. Yes, sir. Then I proved my figures up by adding my totals together and getting the above figures. I set that figure down here. Is that 3,106,000?

Q. Yes, sir.

A. That proves my figures here, No. 1, and the

same here of No. 2; that is carried on through the section in all the other grades of timber, and we added up those columns.

Q. That is, you took other sections in which the plaintiffs had lands and treated them in the same way?

A. Every bit is treated in the same way in this tabulation.

Q. And added all those together as one that was contained in one of those zones?

A. Yes, sir.

Q. You segregated them according to zones?

A. Yes, sir, segregated them according to zones.

Q. In this section which you just referred to, section 19, township 30, range 12, your percentage of grades of logs 50%, that is based upon the run for the entire section, isn't it?

A. Yes, sir.

Q. How does the cruiser get that?

MR. FROST: I think that is a question for the cruiser. They have admitted the veracity of these cruise books.

THE COURT: If the witness knows he may answer.

Q. (Mr. Peters) How does the cruiser get that 50%.

A. That is a question I could not answer very professionally. Probably, I presume they arrive at that conclusion from their experience as cruisers, and sizing up the timber and so forth.

Q. That is a matter of judgment?

A. I think judgment enters into that a great deal, while I am not technically familiar with the way they arrive at it.

Q. It is a matter to be determined by the personal observation of the timber and the judgment and experience of the cruiser, isn't that true?

A. I think so.

Q. Now, suppose that the Lacey people, as you have designated them here, owned only one forty acres here, or, as in the instance in this case, owned five

forties out of that; how would that work out with respect to your average?

A. They get the percentage of the entire section.

Q. They get the percentage of the entire section?

A. That is the only way percentages can be made.

Q. The cruiser has taken as a unit for that purpose the average of the entire section?

A. He has taken an average of the entire section, I understood.

Q. And if three-fourths of the section ran twice as much in grade proportionately as the other one-fourth, there would be a considerable difference as to the separate ownerships of the one-fourth, and the three fourths, wouldn't there?

A. I do not know anything about that.

Q. You did not make any allowance for that?

A. No, sir, I did not.

Q. Wherever you took a section you considered that the Lacey people, for instance, where you were figuring on the zone No. 2 that the Lacey people owned that entire section, would you not?

A. Yes, sir.

Q. And the cruiser has made no distinction here of any subdivision less than a section in estimating the run of logs?

A. Yes, sir, he does; that for instance is a fraction of a section.

Q. He figures out all there is in that fraction of a section?

A. Yes, sir.

Q. That is the only variation from figuring out the entire section as a unit, isn't it?

A. I think so; that same rule has been applied to all the other companies, and all the other zones just as well as this company.

MR. PETERS: At this time it would be impossible for us to offer an illustration of the number of sections that occur in which the plaintiffs own only a fraction of a section. Here is one we only own five forties. There is another that we had a memorandum

of eight forties. From a casual observation they are scattered throughout the holdings quite generally, I understand. Now, undoubtedly that would make a very uncertain method of estimating, and it will impose upon the plaintiffs practically the production of the defendants case if they are allowed to use this method, because we will have to go back and show the number of instances in which this would not apply as a fair representation, and I do not know just how we are going to do it, if we let them put in the evidence wholesale in this manner. It seems to me it would be causing a burden upon the other party entirely. Now, it seems to me that the way in which the evidence could be required to be produced by us would be to have the witness take the detailed sheets of sections that he has here.

THE COURT: What is it that is estimated for the entire section?

MR. PETERS: The grade of logs.

THE COURT: It has nothing to do with this. That is, the tabulation is based on this.

MR. EWING: The percentages are put in as shown there.

MR. PETERS: That is based upon this, and this is based upon a section as a unit; whereas, our holdings, in many instances are all broken, or fractional sections.

THE COURT: But this 50% comes from considering each of these ten acres.

MR. PETERS: The whole section, yes, sir.

MR. FROST: The plaintiffs' in their own pleadings make these comparisons by zones. They say that the timber within certain zones has been very much discriminated against, and the assessor in following this complaint has taken in all of the instances the grades as shown for each section. He followed this same plan not only in this zone but in the other zones, and this tabulation is for the purpose of showing the relative stand per acre, and the relative grades per acre in the various zones and not upon the holdings of the Lacey people.

MR. PETERS: But your statement is for the Clallam Lumber Company's lands by acreage and by number of board feet and the average stand of timber. Ruddock & McCarty lands, the Merrill-Ring Lands, and the Goodyear Lands, and the Puget Sound Mills & Timber Company's lands is by title and by ownership.

MR. FROST: That is largely for the reason those lands have been referred to by their own witness.

THE COURT: The objection is overruled. If those discrepancies are weaknesses in the exhibit, they are subject to be pointed out the same as any other piece of testimony.

MR. PETERS: Note an exception.

THE COURT: Exception allowed.

MR. RIDDELL: Counsel's objection is based on the assumption that the plaintiffs would buy the worst piece of timber in that section to hold.

THE COURT: It may be admitted.

(Statement referred to marked defendants' exhibit "24" and admitted in evidence, a typewritten copy.)

MR. FROST: That is all for the present, Mr. Hallhan. We desire to call this witness later in the case for another phase of the case. For the convenience of the Court we were endeavoring to take the case up in the order in which it was presented.

THE COURT: All right.

(Witness excused.)

R. H. Thompson, witness on behalf of the defendants, being sworn, testified substantially as follows.

He is a civil engineer. His competency in all scientific lines is conceded by plaintiff.

The witness in the year 1891 made an investigation, an estimate and a report of a proposed railroad from the mouth of the Pysht River over to the Sol Duc River by way of Beaver Creek.

The witness says:

I found the possibility of building a road on several different rates of grade depended on the cost per mile which the parties might be willing to expend.

I reported to the company for whom I did the work on two routes, one of which was to have a maximum grade of two per cent, and the other of which was to have a maximum of three per cent. The following is a general course of the road. The mouth of the Pysht river is in section 10, township 31 north, range 11 west. In a line which I had planned I made the same cut-off that is shown on this map in the green line (referring to Remp's map, exhibit 25), through section 10, going to the section line on a course to the west side of the river, and followed on the west side of the river for about two miles and then followed up along near the east margin of section 17, and then cut across and came toward the south branch of the Fork and continued up some distance on the south branch of the Fork through section 29 coming up to the Summit, and the Pysht river in section 35, township 31, range 12, and then from there I followed down Beaver creek practically as shown in this green line on this map into section 29. This line was 21 miles in length and had a maximum grade of two per cent. I took another line which had a considerable amount of three per cent on the Pysht river. I followed into sections nine and eight and into section seven, and then crossed the river and followed very close into the green line which is shown, which crosses into section thirteen and into section 24, and through to the Sol Duc river, with a grade of three per cent.

Three per cent grade is not a difficult grade for logging purposes with a geared engine. From the summit of the Pysht river down to the Sol Duc river I planned making a short section of one and one-fourth per cent grade, just after crossing the summit coming down toward Beaver Lake, but the long detour would reduce that to less than one per cent. This road would be about 17 miles. The cost of these roads would be of the 21 mile road \$320,000; of the 16½ mile road, \$210,000. The witness says that this estimate was for the year 1891. If he were building the road today he would not hesitate to use a 16 or 18 degree curvature as against a 12 degree curvature in

the original estimate as against a 12° curvature and a grade of five to six per cent, which would make the road cost now \$9,500 per mile as against over \$12,000 per mile for the three per cent grade, and over \$16,000 for the two per cent grade of the road as then contemplated.

Q. (Mr. Peters) You made this reconnoissance for Merrill-Ring, did you not?

A. I believe the firm is known as that now.

Q. Merrill, Ring & Brockway?

A. I do not think the name "Ring" was in the company at that time.

Q. Merrill, Bliss & Brockway?

A. Merrill, Bliss & Brockway.

Q. They were the owners as you understood at that time of the timber lands on the Pysht?

A. I did not know anything about the ownership. A gentleman came out here from Saginaw, Michigan, by the name of Young who was instructed to get a careful estimate of the cost of a road from the Sol Duc, and I went with him, with men and went up into the country and stayed there until we were satisfied of our information; as to who it was done for at the time, until I began to write my report I did not know, until today I never saw any member of the firm. A man by the name of Merrill introduced himself to me in the hall a while ago, but I do not know whether that was the man or not.

Q. Mr. Merrill recalls the fact. Did you make this reconnoissance some years ago?

MR. FROST: Who was the one that brought you into this case?

A. I don't know about that, Mr. Frost.

Q. (Mr. Peters) Mr. Merrill was the first man that spoke to you about the case, wasn't he?

A. I never saw Mr. Merrill until about three minutes ago.

Q. I understand that he was the first man from whom you heard your testimony was desired in this case?

A. No, sir, I got notice from Mr. Ewing, the

attorney here, that they had learned I had made a survey there years ago, and they were going to call me into court.

Q. That was after you had had a talk with Mr. Merrill?

A. No sir.

Q. It was not?

A. I never saw Mr. Merrill or anybody except Peter Young to whom that report is addressed until five minutes ago a man who said his name was Merrill introduced himself to me in the hall. This gentleman smiling back here; I don't know whether his name is Merrill, or not.

Herbert H. Wood, produced as a witness for the defendants, on oath testified substantially as follows.

He is county treasurer of Clallam county, and as such custodian of the tax rolls. The witness is asked to state whether other timber owners of Clallam county than the plaintiffs in this suit had paid their taxes for the years 1912 and 1914, objection was made to this on the part of the plaintiff as not competent or pertinent and over-ruled by the court, upon the following ground:

(The Court): "I take it it is following up your pleadings, you waiting in your protest until after other people paid their taxes. My idea is if there is any matter of estoppel, it is not a matter that the county can take advantage of, but I propose letting them make proof on that and see what advantage they can take of it. The objection is over-ruled. Exception allowed."

The witness answered that all of the large timber owners had paid their taxes except the plaintiffs and the Puget Sound Mill and Timber Company. He further testified that none of those timber companies except the plaintiffs in these cases had protested for the year 1913, and none had protested for the year 1914 except plaintiffs Bloomfield and Eldridge and Alsten Fairservice. Bloomfield has 3,000 acres and Fairfax 2,000 acres, and Puget Sound Mill and Timber Company has 13,500 acres.

The tabulation of the witness in the matters testi-

fied to received in evidence as exhibit 27 over the objection of the plaintiff.

Alexander Polson, witness of the defendants, being sworn, testified substantially as follows:

His business is chiefly lumbering and logging. Has been engaged in this business for over forty years and in the state of Washington since 1879. His principal place of operations is Hoquiam. Is familiar with the value of timber and timber lands throughout the

and sell on his cruise. The witness is then asked by the defendant "Having examined those cruises what in your opinion was the market value of the timber in the interior of Clallam county as shown upon this map marked green and known as the Lacey holdings on the first of March, 1912?" Objected to by the plaintiffs as incompetent. The Court: "As shown by the cruises; that is not the basis of expert evidence."

Mr. Peters: "As I understand you have been down and visited this timber in the interior yourself?"

A. No, not examined it expertly, no.

Witness says that in buying timber he does not make it a practice to go personally and inspect every tract of timber but buys upon the cruises of responsible cruisers. The objection is still urged by the plaintiff and overruled by the court and exception allowed the plaintiff.

The witness is cross examined as to his competency by the plaintiff.

He examined these cruises about a week ago. They were in the office of Mr. Frost, the attorney of defendant, and in these two volumes here (Defendant's exhibits 19 and 20).

Q. Did you go over all the land of the plaintiffs?

A. Most all of them, yes.

Q. Did you make any tabulated statement of the lands?

A. I did not.

Q. Did you make any statement of the run of the lands in fir, cedar, or spruce?

A. No more than to examine the report.

Q. That is to say, you looked over all these reports; about how long were you at it?

A. The best part of aday.

Q. How?

A. Nearly a day.

Q. You made no memoranda as you went over it, did you?

A. No.

Q. Will you show me just how you made that examination? Here is one of the books, would you turn to some section and show us just what you would do?

MR. FROST: The court has already ruled upon this question.

THE COURT: Mr. Peters asked to open it up to cross examine him as to the qualifications of the witness.

MR. PETERS: That is the idea.

Q. Open this book up and show me how you made the examination?

A. How do you want me to look at it?

Q. Just what you did; show the court what you did up in Mr. Frost's office, what you did with those books?

THE COURT: He is only asked to illustrate as to one piece?

MR. PETERS: Yes, sir.

A. I took a section of the book and I took the number of feet per thousand of fir, spruce, cedar and hemlock, and looked at the topography of the map of the same to see whether it was rough or level, and I looked at the quality of the timber that was given in the report as I would in any cruise, when I sent a cruiser out to look at it; that is what I am to go by.

Q. You are referring to the page shown here,

section 3, township 31, range 12, on these assessor's books of the timber cruises of Clallam county?

A. Yes, sir.

Q. Then, after having looked at that page you would turn to another page, would you?

A. Yes, sir.

Q. And after having looked at that page you would turn to another page?

A. Yes, sir.

Q. You were engaged at that for about a day, you say?

A. Yes, sir.

Q. What memorandum did you make?

A. I formed an opinion as I would from any cruise.

Q. You did not take a pencil and paper and put down what you gathered?

A. No, sir.

Q. Who told you, or what, if any, list did you have to find out what lands your attention was to be directed to?

A. I think Mr. Frost told me.

Q. (Mr. Frost.) As a matter of fact we had one of those maps, didn't we?

A. Yes, sir, the map was there. We have a colored map of all those holdings ourselves, too.

Q. (Mr. Peters.) Did you look at each one of those sections here and township, and then refer to them in the books?

A. Yes, sir, in a general way, yes, sir.

Q. Could you say to the court that you went over all the lands owned by the plaintiffs in this case?

A. I might not all the forties, no.

Q. How many sections did you examine, would you say?

A. Nearly all the sections, the solid sections.

Q. Nearly all of the sections?

A. Yes, sir.

Q. That was how long ago?

A. About ten days ago, or such a matter.

Q. Mr. Polson, I refer you to section 33, town-

ship 30, range 11; will you state from your memory now any of the data that is contained on that sheet whatever?

A. No, not in particular, no.

Q. Have you in mind any of the data that is contained on any one of these sheets with respect to the plaintiffs' land?

A. These sheets?

Q. In this assessor's books?

A. Not without looking at it.

Q. Can you give a description of the township in which these lands of the plaintiffs lie, take the Lacey people first?

A. No, sir, not without the county's records.

Q. Can you tell how the timber graded in any township, in any section of any township of the plaintiffs' land; do you recall it now?

A. Not without going to the records.

MR. PETERS: I do not think that evidence is of any value whatever. We renew the objection on the ground of the incompetency of the witness.

THE COURT: The objection is overruled.

MR. PETERS: Note an exception.

THE COURT: Exception allowed.

Direct examination of witness continued.

The witness would consider the fir, spruce and cedar of plaintiffs' lands in the interior on March 1, 1912, as worth \$2.00 per thousand. He would not consider the hemlock of much value, because it sinks when put in the water. It would have some value if milled on the ground. From ten to 15 to 20 cents a thousand. He is asked as to the value of this holding on the first day of March, 1914. The same objection was made by the plaintiff as to his testimony for the year 1912. The same ruling of the court and the same exception.

The witness then gave it the same value as in 1912. The witness thinks that the Merrill and Ring, Goodyear and Puget Sound Mills and Timber Company timber, in the Straits zone, was of the same value. He further says that he is putting in from a

half million to seven hundred and fifty thousand feet of logs per day and admits his company is operating over a logging railroad a distance of twenty or thirty miles. He pulled three hundred million feet up a five per cent grade. Does not think there would be any difficulty in the operation of a logging railroad 17 miles in length with an adverse grade of not to exceed one and one-fourth per cent, and a favorable grade to salt water of not to exceed three per cent or four per cent. He thinks such a railroad could be operated successfully. Thinks the addition of a few miles of haul, say six or ten miles, after the logs are yarded and loaded on the cars, makes no appreciable difference in the cost of operating railroads.

The witness has bought recently a little timber on the Sol Duc from Eugene France of Hoquiam and Lowe of Grand Rapids. That timber was twenty miles from salt water.

Upon cross examination Mr. Polson testified:

That he had never been upon the lands of the plaintiffs in this case to make any minute cruise. He had no knowledge of the respective elevations between the lands of the plaintiffs and the Straits, except the cruiser's reports by Lou Duvall and other parties that had made cruises years ago. The witness is acquainted with the Merrill and Ring Company that owns those lands upon the Straits, but is not a stockholder in that company. The Merrill and Ring Company are stockholders in the Polson Logging Company, owning one-half of the stock, of which the witness Polson owns one-quarter. Witness has never heard of any timber being logged or sawed anywhere in the interior of Clallam county south of the Mountain range that has been referred to that separates the lands upon the straits from the lands in the interior. Witness's attention being called to the railways, witness says that all railways and logging roads leading north from Grays Harbor terminate at Moclips. The Northern Pacific Railway terminates at Moclips. The witness' own logging road also leads North of Grays Harbor and Coats-Fortney extends thirty miles from salt water.

The Coats-Fortney about ten miles. The Northerly terminus of his road is about twelve miles north of the north line of Chehalis county. There is not very much of a fire hazard to the timber in the interior of Clallam County. Does not know anything about the existence or not of burnt lands in the interior. In logging the timber lands upon the straits, taking the Goodyear lands for instance, in case of damage to such timber lands by a fire, witness would log this to Port Angeles, and not to the straits. He would mill it on the ground or take it to Port Angeles, and witness does not know of any way by which he could take out the timber lands in the interior in the event of damage by fire, except by first building a railroad into it. There are no driving streams that run from the interior to the straits. The streams in the valleys of the Sol Duc and the Callaway, where the plaintiffs' lands lie, do not run to the straits, but they run in a Southwesterly direction to the Pacific Ocean. The only way to bring this timber out from the interior is by rail to Port Angeles. The witness can't say how many miles such a railroad would have to run from Port Angeles into the center of the Lacey holdings and the Sol Duc valley.

Q. I did not ask you that, Mr. Polson; but without being exact, approximately how many miles, whether it would be thirty, or forty, or fifty?

A. That all depend on the grade you would want to make in your survey. That is altogether according to the judgment of the man moving the timber. One man will use a shorter and steeper grade, and another will use more mileage and easier grade.

Q. If you went in there upon a direct line, would a direct line from Port Angeles to the Lacey holdings in the interior be any less than forty miles, say, in length?

A. That would absolutely depend on the survey.

Q. I am not speaking of a survey; but if you simply laid the railway down on the map and measured the distance with a straight line from Port Angeles

into the interior of Clallam county, where the Lacey holdings lie, would the distance be forty miles?

A. The Lacey holdings run a good many miles; it depends what point on those lands you want to measure to.

Q. Well, say that the Lacey holdings commence, as I understand it, about a half or three quarters of a mile west of Lake Crescent; do you know how far that is from Port Angeles?

A. If you will tell me the townships they pass through, it is easy enough.

Q. Do you know anything respecting the difficulties of railroad construction from Angeles into the interior of Clallam county where these Lacey holdings lie?

A. No more than what I have talked with the Milwaukee people. They said they can construct a railroad at nominal cost.

Q. They said they could construct a road at nominal cost?

A. Yes, sir.

Q. That is, extending from Port Angeles where to, to Lake Crescent and around the Lake?

A. Yes, sir, around the coast, to Grays Harbor.

Q. But whether it is true that such a railroad can be constructed at a nominal cost, or not, you do not know?

A. No more than their information they gave me.

Q. You do know, however, that no such railroad has been constructed up to the present time, do you not?

A. I know that there is no road constructed; that is any amount of it, to say: the Milwaukee, I understand, started one.

Q. In speaking of the Milwaukee road, you know, do you not, that the Milwaukee road, or a subsidiary of it, have already constructed a railroad from Port Angeles some miles west?

A. They told me that they started construction of it.

Q. From Port Angeles in a westerly direction to the Earles' holdings?

A. Yes, sir.

Q. Can you tell, even approximately, from such information as you have how much the cost of that railroad was per mile?

A. I never asked them.

Q. Have you any knowledge upon the subject?

A. I have not.

Q. In giving your testimony of the value of this timber in the interior, did you take into consideration the necessity of constructing a railroad into the interior of Clallam county?

A. I did.

Q. What sort of a railroad did you make your opinions upon, what length of road?

A. Public road or a private road?

Q. A public road or a private road, either one.

MR. FROST: By that you mean a common carrier, do you not, or a private?

A. Yes, sir.

Q. (Mr. Keeney.) What was the length of the road you took into consideration in making your calculation?

A. A road from Port Angeles to get that timber, to haul that timber and all the other timber in there.

Q. You made your estimate then upon a railroad running from Port Angeles into the interior of Clallam county?

A. Yes, sir.

Q. And what was the estimated cost of construction of that road?

A. From fifteen to twenty thousand dollars a mile.

Q. How many miles did you put down in your calculations?

A. I did not put them down.

Q. You made an estimate of the cost per mile, but you did not complete your calculations by making any computation of the length of the railroad, is that what you wish to be understood as saying?

A. No, I was taking the quality of the timber and the ground, and what you would pay for the timber and the way we would build our road. I could just as easily take that timber out as our own and pay \$2.00 a thousand.

Q. But you would have to build a railroad first to reach it?

A. Yes, sir.

Q. Did you figure in your calculation upon a railroad twenty miles in length, or fifty miles in length?

A. Oh, indefinite.

Q. Or, did you figure upon a road that would run from Port Angeles into the interior of Clallam county, and thence on to Grays Harbor?

A. Yes, sir, that is where I would terminate eventually.

Q. Is that what you took into consideration in making your figures?

A. No, sir; I took into consideration reaching this body of timber.

Q. And taking it out to Angeles or to Grays Harbor?

A. Port Angeles, the shorter haul.

Q. Did you make any estimate in detail as to the cost of this road, that is, any computation in which you would put down the cost of the grade, and cost of the steel, of the ties and the other things that go to make up a railroad?

A. No, sir; those have to be gone into. You can't do that without making a survey of the road minutely; you can approximate it, but not minutely.

Q. So you undertake only to approximate it?

A. Yes, sir. The road may be built for twelve thousand dollars; it may cost twenty. It is approximately that.

Q. In going over those cruises in the books you found, did you not, that a large portion of the timber of the Clallam Lumber Company was in that rather mountainous country along the Callawa River with elevations of two thousand to twenty-five hundred

feet, and in some cases three thousand feet, did you not?

A. Some portions of it are quite high.

Q. Had you planned any route for reaching that timber and taking it out to the market, or make any calculation upon the length of such a line?

A. By what?

Q. Did you make any calculation respecting the length or the cost of a railroad to reach that timber along the Callawa?

A. Some is more expensive to move than others. Others is more cheaply moved. It will all average up to a certain figure.

Q. Did you make any calculation respecting the length of the railroad that would be necessary after you got to the interior of the county in order to reach the various holdings of the Lacey Company, stretching along the Sol Duc and Callawa Rivers?

A. Not minutely, no, not every section. It was not necessary.

Q. Mr. Polson, what are the present prices of logs in the markets of Puget Sound?

A. On hemlock is from 6 to 7; spruce from 6 to 12; fir 6, 8 and 11. (This means so many dollars per thousand feet.) The price for logs, on March 1, 1912, was about \$1.00 higher on all grades than March, 1914. The market on Gray's Harbor was about the same as the market on Puget Sound. The production of logs on Puget Sound since March, 1912, has remained about the same. There has been no scarcity of logs nor tendency toward over-production. There is not a ready sale at good prices for all the lumber than can be manufactured in the mills in Washington and Oregon and has not been for several years. This condition has had a tendency to lower the price of logs and has existed since 1907.

Q. I ask you whether in view of this condition that you have described you are able to perceive any particular necessity for opening up large, new areas of timber in order to supply the market at this time?

A. Well, that depends on the judgment of the men going into the business.

Q. Well, I am calling for your judgment, Mr. Polson, as an expert, you being an expert in this logging and lumbering business; do you perceive any need, or do you perceive a commercial desirability here in Washington of opening up at the present time large new areas of timber to the market?

A. Taking it from my viewpoint I would rather they would not open that up, and give me a better market for what I am doing.

Q. Is that the best answer that you can make to that question.

A. That is an honest one.

Q. Taking the existing logging operations in the State of Washington, in your judgment are those logging operations highly profitable at this time?

A. In all probability they are not highly profitable.

Q. I did not get that?

A. In all probability they are not all highly profitable.

Q. I am not asking you about your particular operations, but taking the condition of the business as a whole, is it highly profitable business at this time?

A. We could stand a good deal more.

Witness' judgment as to the value of interior timber was practically the same before he was shown the county cruise books as afterwards. Witness was not asked by the defendants to be a witness in the case until two or three weeks ago, but did not tell the defense at that time what his valuation of the lands was and they did not ask him.

Witness knows what the lands on the straits were assessed for because he knew it was assessed a good deal lower than his own lands. He discovered this because he goes before the State board of equalization every year and wished everybody assessed pretty nearly right so he would not have to pay all the taxes. The witness' lands, 20 miles back from the water, were assessed at \$1.00 a thousand feet stumpage. The hem-

lock from 25 cents to 40 cents, both in Chehalis county and in Grays Harbor county.

Q. Then you did have occasion to inform yourself as to what these lands on the Straits were assessed for?

A. All over the State.

Q. Did you at the same time have occasion to find out what the lands in the interior were assessed for?

A. Interior where?

Q. The interior lands of Lacey & Company you have been testifying about?

A. Yes, sir.

Q. Did you acquaint yourself with that?

A. Yes, sir.

Q. That was how long ago, in 1910, 1912, or 1914?

A. I have been following that up for ten years.

Q. And at that time did you inquire into the actual value of the lands in the interior?

A. I formed my own personal opinion.

At the same time the witness acquainted himself with the assessment of the interior lands in Clallam county, and at that time he formed his own opinion as to the value of these lands.

Q. Did you go down to see the lands in the interior at that time?

A. No more than I go to see my own lands.

Q. Did you go down to see those lands?

A. No more than I do my own lands.

Q. Did you ever see those lands?

A. I have been through them.

Q. In what manner did you go through them?

A. Walked through them.

Q. For what purpose?

A. To see the country and to see the timber.

Q. How long were you in there making that expedition?

A. I was in that country over twenty years ago.

Q. And you have been there since?

A. No.

Q. Based upon that estimate you were discussing the relative assessed values before the Board of Equalization?

A. I have had cruisers' reports on all of that country, and its timber for the last ten years.

Q. You had other cruises?

A. My own cruisers' reports on the character of the country; not that land, but the entire forest reserve of the Olympic Mountains.

Q. What, if any, difference did you make in your valuation of the lands on the Pysht and the lands on the Hoko on the Straits, the lands about the Hoko, and the lands about the Pysht, that is, the timber, I should say?

A. On what stream?

Q. The lands in what we have referred to in zone No. 1, now, in what difference in your estimation of the value, if any, did you make between the lands here on the Pysht, along that river, or the lands up here along the Hoko River?

MR. FROST: We do not see the materiality of this question. We desire to object. There is no comparison between the timber in the same zone; that is in the same zone.

THE COURT: It is cross examination to show what, if any, familiarity the witness has with the timber. The objection is overruled.

MR. FROST: Note an exception.

THE COURT: Exception allowed.

Q. These lands tributary to the Pysht, in the neighborhood of it, and those are lands along the Hoko? (Showing.)

A. In what respect, as to quality and accessibility in getting it out?

Q. State quality and grade and value?

A. There is not a great deal of difference.

Q. Is there any difference?

A. There is a little, not much.

Q. How much?

A. I don't think there is any.

Q. No difference in value?

A. Approximately.

Q. No difference in grade?

A. On an average.

Q. No difference in quality?

A. No.

Q. How about age?

A. It is all old enough.

Q. Did you make any difference as to your estimate in the valuation between the timber of Michael Earles' property here, and the Merrill & Ring property over on the Pysht?

A. The Merrill & Ring timber is older timber.

Q. Which is?

A. The Merrill & Ring timber.

Q. Which is in your judgment the lower value as to the market value in 1914 and 1912?

A. That depends on what you want it for.

Q. To get money out of it and put it on the market?

A. To get money out of it you very often have to drop your old growth timber and go into the section of merchantable timber and get good money out of that; the filling of an order and things move, you drop back to the old growth timber and get more money out of it, and that depends on what the market calls for.

Q. That is what I want to get at; what was the market value of this tract as a whole, of the Michael Earles' timber compared with the timber market as a whole of Merrill & Ring on March 1, 1912, and March 1, 1914?

A. I could not tell you without going to the books and see what the orders called for at that time.

Q. You know, do you not that the Milwaukee Railroad now terminates in the Michael Earles' holdings, which I point out?

A. I do not know absolutely. I have not asked them where their railroad terminated lately.

Q. Assuming that it does, would you attach any more value to those lands of Michael Earles than to the lands of the plaintiffs here in the interior?

A. No, I don't know as I would.

Q. You would just as lief have the lands of the plaintiffs in the interior, located back of the mountain range without any railroad as the lands of Michael Earles that has a market right here on the road?

A. If I wanted to move that timber in the Milwaukee would soon build a railroad.

William J. Chisholm, witness on behalf of defendants, testified:

Has been a logger for 45 years, in Michigan, Minnesota and Washington; eight years in the State of Washington. Is general manager of the Merrill and Ring Logging Company. Is familiar with the methods and manner of logging in the Northwest and the cost of logging. As general manager has had charge of the construction of logging railroads. Has built 400 or 500 miles while in the logging business. Is acquainted with the market price of logs in the Puget Sound markets and with the value of standing timber. Witness has been over certain portions of the timber lands lying along the Straits in Clallam county comprising the holdings of the Goodyear, Merrill and Ring, and Milwaukee Land Company, and Puget Sound Mills and Timber Company. Has been across the plaintiffs' timber, along the Sol Duc River, from Lake Crescent to Mora and from Bear River to Clallam along the road. He is acquainted with the topography of the country. Is familiar with the conditions attending upon the logging operations in the Straits and in the interior.

As to the difference in cost of placing in the water the timber in the Straits zone as compared with the timber in the interior zone, the witness says. This depends on the quantity of timber to go out over certain roads. If a man owned 40 acres in the interior and 40 on the shore, the forty on the shore would log the cheapest. But a big holding, it would cost no more to log a big holding, taking the plaintiffs' holdings for instance, against the other holdings. The amount of timber is what makes the difference in the cost.

Witness says that the Lacey holdings in the interior belonging to the plaintiffs would log into the waters of the straits as cheaply as the timber in zone 1, owing to the fact of it being in big holdings and the country being level in the interior zone. Witness has examined the county cruises of this timber. Just looked them over. Thinks the timber in the interior, by reason of its large holdings, would be worth about \$1.50 a thousand, the same as the timber in the straits, in March, 1912; and March, 1914, about the same.

On cross examination.

The witness has been with the Merrill and Ring people for 35 years. Is now on the Pysht river in charge of the logging operations of Merrill and Ring at that point. Spent three days about seven years ago going through this timber on the straits. Merrill and Ring then had and now have a tract of about 25,000 or 30,000 acres. Was down there a year ago for three or four days. Examined the mouth of the Pysht river but did not go through the timber. Again was there in August of last year, 1914, going through the timber with the idea of opening up timber operations. Have been there three or four times this year about three days on each occasion. Witness is interested with the Merrill and Ring people in their property in Snohomish county. Witness has never been connected with any logging operation in Clallam county, nor examined the returns of any logging operations there. The Merrill and Ring own the mouth of the Pysht river on both sides. Witness visited the Goodyear logging operations at Clallam Bay. Witness was in that country in June or July last driving through with Merrill and Ring in an automobile to examine the operations at Pysht river. They were not investigating the timber at that time. Witness did not know of any existing law suit at that time, nor was his attention called to the plaintiffs' lands, but he looked at the timber just as any man would who follows the woods. Whenever such a man goes through timber he always observes it. Witness did not know then that he was to be a witness in this case, and made no memoranda

at the time. Made an examination of the county cruises within the last two or three days since he found he was to be a witness. Could not tell how many acres of plaintiffs' lands he examined by this cruise. Does not remember the facts or anything of that kind. Just took the county cruises and compared it with some of Merrill and Ring's cruises and the total holdings of each party. Has no statement of it. Did not put it down on paper. Saw some of the Lacey timber, some of Merrill and Ring's and some of the Goodyear timber. Made no record of that of anything of that kind. Barely looked it over, just compared it in his mind. Just took odd forties in different places and glanced through it. Looked at the totals and footed up the totals of all the Lacey timber and the Merrill and Ring timber. Says he did not know at that time that he was to be a witness.

Q. Who suggested your looking at the cruises?

A. I don't know as anyone did.

Q. How did you know where to find it?

A. I say, "People, where are you going," and they says, "Going up to look at the Clallam County records, up in the jury room," up here.

Q. Up where?

A. They were up stairs at that time, on the next floor.

Q. Who suggested your going up?

A. I don't know as anyone suggested it.

Q. Didn't you know at that time that you went up to look over those that you were going to be a witness?

A. No, sir, I did not know that I was going to be put on the stand for a certainty until yesterday.

Q. I asked you whether you knew you were going to be a witness—

A. No, I did not when I went up.

Q. You went up more out of curiosity to look at the books?

A. It is always a curiosity for a logger or a timber man to look at those things.

Q. What other timber did you examine at that time from the assessor's books, from the cruises?

A. I looked over some of the Goodyear's and Merrill & Rings and Lacey's, just odd forties here and there.

Q. And no other timber whatever?

A. No.

Witness thinks that if a forty acre tract from the interior was located on the straits that it would be more valuable in this position because he says one could not afford to build a road into the timber for forty acres in the interior, but if it was on the straits it could be logged as it lay with a donkey engine and one would not have to build a railroad. Merrill and Ring are now contemplating logging their lands on the straits. If the condition warrants they may put in some 75,000,000 to 100,000,000 feet a year. Thinks that Michael Earles' mill cuts that much or more.

Q. Did you figure what it would cost to put a railroad down into the Lacey Company's holdings?

A. I figured out in my own mind.

Q. I asked you if you did figure it?

A. Yes sir.

Q. Have you a memorandum?

A. I did not make no memorandum.

Q. You did not make any memorandum?

A. No sir, I do not make them.

Q. When did you figure it?

A. Just lately.

Q. What day?

A. Probably yesterday.

Q. Probably yesterday; was it yesterday?

A. Say, yesterday.

Q. I am asking you to state when it was?

A. Yesterday.

Q. It was yesterday?

A. Yes, sir.

Q. After you heard Mr. Thomson's testimony?

A. Yes.

Q. You were in here, weren't you?

A. Yes.

Q. And you heard Mr. Thomson's testimony?

A. I had my figures made before Mr. Thomson testified, though.

Q. You made them yesterday?

A. Yes sir.

Q. Have you got them yet?

A. I have got them in my head.

Q. What did you figure was the cost of that per mile?

A. Well, I figured—I will tell you my way—I figured it would cost about four thousand dollars a mile to grade; that is, about eighty dollars a station, good and bad. I figured the rail, you buy a rail now from a good relayers for \$29.00 a thousand. I figured about ninety-eight hundred ton to the mill.

Q. How much did you figure for the rail per mile?

A. Twenty-nine times twenty-nine hundred dollars, one hundred tons to the mile. I figured it over roughly.

Q. How much did you figure?

A. I say, \$2900 for the rail.

Q. Was that laid?

A. No.

Q. Were you going to lay it?

A. I expect you would, if you were going to run a railroad.

Q. Will you proceed to tell us how much it would cost?

A. If you give me a chance, I will, and let me tell it in my own way?

Q. In your own way.

A. I figured the ties would cost, if you had to buy all of the ties it would cost a little more, but in a general thing in going through a country like that you would make a good many ties. We are having ties put on our road at 14c a piece, put on the cars.

Q. What kind of ties did you figure?

A. Some sawed ties, and some hewed ties.

Q. What price per mile?

A. 35c per tie.

Q. How much did that figure per mile?

A. 2500 ties a mile.

Q. Can't you figure it for me?

A. I can take a pencil and figure it out.

THE COURT: Something over eight hundred dollars.

Q. \$875.00?

A. \$875.00, that is my figure for it.

Q. What is your next item?

A. That is the rail, ties, and the grade. There is your spiking, and fishplates, and couplings, would probably cost another thousand dollars, and laying would probably cost, oh, I don't know, five dollars a station; that would be around one hundred and fifty, or one hundred and seventy-five dollars a mile to lay it.

Q. Would that complete your road, the items you have given?

A. No, you have some ballasting to do then. Of course, the conditions in handling your ballasting is handled different—it depends where your ballast is, and how much it would cost to get it on your right of way. There is no set price on that. It might cost one hundred dollars a mile, and it might cost five hundred dollars a mile. It is hard to tell.

Q. Put it at two hundred and fifty dollars a mile; would that be fair?

A. Yes sir.

Q. Is there anything else to add to this?

Q. No, sir; I think that would pretty well cover that.

A. I make that out as \$8200.00 a mile.

Q. Well, I put it \$8500.00 a mile. I did not figure this down fine.

MR. EWING: \$8900.00?

MR. PETERS: I will accept the amendment of counsel; say it is \$8900.00.

Q. Point out on the map and show where you would put the railroad in there to get the timber out to make it valuable.

A. Well, I think it could come up from Angeles to Lake Crescent and go in that way.

Q. How many miles?

A. Forty-two miles, maybe forty-five, and put it into the center of their holdings. That would be right into the center of the Lacey holdings; that is twelve miles in to the timber.

Q. Did you figure the grade of the road that you now suggest, to Port Angeles?

A. I haven't been over there and taken the topography of that country, but you can get a logging road almost any place you want to put it.

Q. And the elevation you have to surmount and the rivers you have to cross are immaterial?

A. No, that all goes in with a logging road.

Witness being asked to figure equipment necessary to log 150,000,000 feet a year, which he says would be the proper method of operating the interior timber, estimates \$50,000 for four locomotives; 60 miles of rail, \$180,000; 200 cars at \$500 a piece; ten donkey engines, with necessary cable, \$4500 apiece. Witness says that he figured that 15 cents a thousand upon the 3,250,000,000 feet of the Lacey holdings would build a road complete twelve miles into the timber. Witness says he does not know what the price of logs in 1912 was in Clallam county, nor 1914. Never sold any logs in Clallam county. Thinks the price of fir logs in the Washington market in 1912 was \$6.00, \$9.00, and \$12.00. In 1914 the same.

Q. What did you consider the value in March of 1912, of the Merrill & Ring lands and timber?

A. Oh, I do not know what they were.

Q. What?

A. I do not know the valuations in that country because I was not around there.

Q. Well, you undertake to place the valuation upon the timber lands of the plaintiffs in the interior, don't you?

A. No, sir; I thought the two values were about a dollar and a half, the whole belts in there; that is, taking the group.

Q. What belt?

A. Taking the group or zone, or whatever you

call it. I am calling it the Lacey holdings, or group, and the Merrill & Ring group.

Q. You undertook to put an estimate on the value of those lands at a dollar and a half a thousand?

A. I say, all a dollar and a half a thousand. I don't see any difference in the prices.

Q. Is that for spruce, fir and cedar alike?

A. That was for fir.

Q. What valuations did you put on the spruce and cedar?

A. Well, spruce is, the values in spruce have fluctuated a good deal since I have been in this country. I do not know—I have not sold much spruce. I have handled quite a bit of cedar.

Q. Did you take into view that this was wholly fir on those sections?

A. No; I knew there was a little spruce.

Q. What estimate did you make for the spruce and cedar in fixing your valuation?

A. Spruce and cedar ought to be worth more money. They bring more money than the fir does.

Q. How much did you allow for that?

A. Take it in that country, \$2.00, or \$2.25 for the cedar and spruce?

Q. What did you allow for hemlock?

A. Hemlock, that is pretty bad going down there. It is something you can't do very well down there. It ought to be milled there. I should not call hemlock of any particular value down there.

Q. What do you say was the value of the Merrill & Ring timber at the same period, of the fir?

A. I should judge about the same, a dollar and a half.

Q. And of the cedar and spruce?

A. The same.

Q. The same as what?

A. The same as the Lacey land back here.

Q. And the Michael Earles' tract, what would you say was the value of the fir at the same period?

A. About the same.

Q. And of the spruce and cedar?

A. I do not see any difference.

Q. Not a bit?

A. No, sir, very little, if any, except on the fact that the Michael Earles is, as you know, on the railroad, running out here to his plant, and is operating with a railroad, as you say, something like in the neighborhood of one hundred million a year, I should judge.

Q. And you did not estimate that his timber is worth any more than the Lacey people, in the interior, or the Merrill & Ring people out on the Pysht?

A. Well, if the Lacey people operate their timber it would not be worth any more for them to put a railroad in there. Earles have a railroad in there, or the Milwaukee has.

Q. Earles has a railroad in there, has he not?

A. So could the Lacey people have a railroad in there.

Q. You figured today that the fir on Michael Earles' property, or rather, in 1914 was worth just as much and no more than the fir on the Lacey people's property, than on Merrill & Ring's?

A. I do not believe Mike Earles is getting more than a dollar and a half stumpage out of it.

Q. I asked you what it is worth?

A. I could not tell you those figures. I am saying what I think. I do not know the exact value. There is no one knows the exact value of a stick of timber until it is cut.

RE-DIRECT EXAMINATION

BY MR. FROST:

Q. Take the timber known as the Goodyear, and Merril & Ring's timber, situated in zone No. 1, along the Straits, does it require a railroad and locomotives and cars and the other equipment detailed in your cross examination to log that?

A. Yes, sir.

Q. In other words to log one hundred and fifty million feet of timber, of that timebr, it would require as much equipment as it would to log the Lacey's, practically?

A. They might do with one locomotive less.

Q. But, if you were to operate that along the railroad described by Mr. Thomson in his examination, his testimony yesterday, which you heard, would it require any more equipment?

A. That was 16 miles of road he was talking about.

Q. Yes, sir.

A. I do not think it would. You might have to have a little heavier locomotive on your main line. The cost of hauling the logs after you get them to the main line is very small when you are logging up into the one hundred millions.

Q. In estimating these 60 miles of steel was there a considerable portion of that steel that would be used in building what is known as logging spurs?

MR. PETERS: This is your own witness and I will ask that you be not so leading.

MR. FROST: We are endeavoring to bring it out clearer.

MR. PETERS: But I want the witness to testify.

WITNESS: I did testify.

THE COURT: He is discussing the matter with the attorney and not with you, Mr. Witness.

Q. (Mr. Frost.) These rails, concerning which you have testified, as being used in logging spurs, would be used over and over again, would they not?

MR. PETERS: I object to that as leading.

A. Yes, sir, over and over again.

MR. FROST: That is not direct examination, it is only giving the witness an opportunity to clarify matters that were brought out in the cross examination of counsel.

THE COURT: The objection is sustained.

MR. FROST: Note an exception.

WITNESS: Your Honor, when I said 60 miles, —can I go on?

THE COURT: If you have any explanation to make. The question can be answered by yes or no, if you have any explanation, go ahead.

A. On cross examination, by saying it would take 60 miles of rail to operate that one hundred and fifty million feet can I explain it?

THE COURT: Yes.

WITNESS: I figure that eighteen or twenty miles of that would go into branch lines. It would be used over and over. As fast as a branch was cleaned up you would move it to another branch. You would have your grade in and you would take your steel and ties up and move them over to another branch. I did not suppose that they understood it would take sixty miles of rail on a main line, and never be moved, any of it.

Q. (Mr. Frost.) Is there any difference in the quality and value of hemlock in those respective zones?

A. I think there is. I think the hemlock, in fact, of the timber that stands close to the straits is more shaky, and liable to rot than the interior timber. The interior timber is sounder and less shaky. I think along the Straits, there, that the hemlock is practically worthless, until you get back a certain distance from where the high winds strike it. When you get back over in the valley, then you won't find near as much shaky timber as you will along the edge of the Straits.

Q. Will it be necessary to build a considerable amount of railroad to move the Merrill & Ring timber in zone No. 1 along the Straits?

A. Yes, it will. I should judge it will take in the neighborhood of three or four hundred miles of branch line to take that timber out, to log it economically.

Q. What do you refer to now?

A. I mean, log the whole timber; that is, branch lines, it would take a good many branches in thirty thousand acres. It may not take four hundred; probably three hundred miles.

Q. That includes spurs that are taken up and relaid?

A. Yes, sir.

Q. And you have done that a good many miles?

A. It takes a good many miles of railroad to grade and build.

THE COURT: Before we get away from that, I don't understand whether the witness means to say that it would take more railroad for the same amount of timber in the coast-Straits timber than in the interior timber when he tells about the bulky amount that doesn't mean anything, but when you separate it from the proportion of the timber that is being obtained——

Q. (Mr. Frost.) Explain to the court what you mean?

A. As a general thing in the rough country, the rougher the country, it will take a little more railroad, unless you increase your cost of yarding. You can build a railroad and make your yarding shorter, and it decreases the cost of the logging, and in a level country you overcome a good deal of that. You can reach further out. Sometimes you can build a railroad around the brow of a hill and you might want to go around until you get up to the top of the grade by keeping going around and around.

Q. (The Court.) Do you mean to say it would require more branch road for the same amount of timber on the Straits than it would in the interior?

A. Oh, no, sir, I don't think it would. I do not say it would. It would only require sixty miles of railroad to log that Lacey people's timber. I am talking about starting operations there on the coast.

Q. (Mr. Ewing.) Mr. Chisholm, does the mere fact that timber is located in the zone along the Straits contiguous to the water mean that you can log right down into the water; does it do away with the necessity of having railroads?

A. No, no, no. You have to take your logs to a certain point to make economical logging. You have to have a central place to dump your logs into the water.

Q. You testified to having built at least five hundred miles of logging railroads?

A. Yes, sir.

Q. What are the facts with reference to those

railroads having been successfully operated after you built them?

MR. PETERS: I object to that as improper.

MR. EWING: Yes, but you inferentially questioned his ability to build a railroad. Ask him if he made the same sort of a computation for that as he did for this.

MR. PETERS: I will submit it to the Court.

THE COURT: Objection sustained. Exception allowed. I think there has been enough qualifying of the witness.

H. B. Newbury, witness for the defendants, testified as follows:

Witness' occupation is logging, lumber, saw-milling, business, buying and selling timber. Has been engaged in this for 25 or 30 years in Oregon and Washington. Has had the actual supervision of logging and lumbering operations. Has supervised the construction and operation of logging railroads. Is familiar with the methods of logging in the Northwest and the cost of logging, and the market price of logs in the Puget Sound markets for a number of years last past. Is familiar with the value of standing timber in the State of Washington generally. Has been across a portion of the lands of the plaintiffs in Clallam county, and made a sufficient investigation to form an idea as to the conditions of conducting logging operations and the value of the timber. Witness is also familiar with some of the lands lying along the Straits and beyond Clallam Bay, and has examined some of the county cruises of Clallam county. Witness is then asked as to the value of the plaintiffs' timber lands in March, 1912. Witness is then cross examined by the plaintiff upon his competency and answers.

Witness went down to examine the lands of the plaintiff at the request of Mr. Frost, counsel for the defendants, in August last, accompanied by Mr. Frost, Mr. McGuire, Mr. Riddell and one or two county commissioners of Clallam county. They went down from Port Angeles in automobile. Got into the timber quite

a bit. Was in there about five days traveling around through it. "I was further around and on the Straits and on the Hoko River, around in there." Witness did not make any notes at the time except to take up an acre here and there. He was not there cruising. Made no memoranda except for his own benefit. In a little book. He has not the memoranda with him. Was in the timber along the Straits about a part of two days. At the time had no cruises with him or any reports of cruises. Was down there two or three times before this occasion, but made no investigation on those occasions of the plaintiffs' lands.

Direct examination of witness continued.

Q. (Mr. Frost.) In making your examination of this timber, did you use an aneroid barometer and take the elevations here and there?

A. Yes, sir.

Q. Did you carefully study the physical characteristics in the country in these respective zones?

A. Yes, sir.

Q. With a view of ascertaining the logging cost?

A. Yes, sir.

Q. Did you, or did you not, take elevations with an aneroid following up the Beaver Creek, passing Beaver Lake and down the Forks of the Pyslit, and on to Clallam Bay?

A. Yes, sir.

Q. You made very careful observations of those things, did you?

A. I took five days.

Q. Did you observe carefully the character and condition of the country, or the earth, with reference to the possibilities of railroad construction and the cost in going through there?

A. Yes, sir.

Q. Did you make investigations of the character and quality of the soil along the Sol Duc Valley, and upon which the timber of the plaintiffs stand?

A. Yes, sir.

Q. And you carefully examined into the grade

and quality and condition of the timber upon those lands?

MR. PETERS: I object to that as leading.

THE COURT: Objection sustained. Exception allowed.

Q. Just what investigation did you make down there?

A. We went out and traveled around through the timber and made an examination once in a while. I would take up an acre and count it and measure it and put a tape line on various trees and figure them out, just to look it over.

Q. To what extent did you make note of the quality of the timber in those respective zones?

A. In traveling through it we made an examination and passed our opinion on the different trees, and measured them and examined the timber.

Q. You did not make a note of the quality of the timber, and the grade of the timber?

A. Well, I did not set down no notes.

Witness would say that the value of plaintiffs' timber on March 1, 1912, was from \$1.75 to \$2.00 a thousand. The value of the Straits timber would be the same, and the value of both of these districts of timber would be the same in March, 1914, and in March, 1912. Witness eliminates from this the hemlock. The witness thinks hemlock of no value whatever, except that it would be used in logging operations. There is no difference in the quality of the hemlock in the two respective zones.

On cross examination the witness says:

He has never bought or sold any timber lands in Clallam county. On one occasion he went down to Clallam county to look at lands for a proposed purchase about six years ago. The land was at the mouth of the Hoko River. Witness has not purchased or sold any lands in any considerable quantity during the last five years. There had been no considerable sales of timber lands during that period. Witness read in the paper of a large sale of timber lands in Oregon. Does not think there has been much done in the last

four or five years. The tendency of the market for the past five years is downward from the operating standpoint. From the holding standpoint it has been at a standstill. Witness' logging operations in Washington have been along the Columbia river, but he built some roads up in King county. Witness examined the cruise books of Clallam county at the request of the defendant. During this examination he had a map showing the location of the plaintiffs' timber. They also had this map of the plaintiffs' lands with them in the woods.

Q. You said that you were down in the timber there for four or five days?

A. Yes, sir.

Q. How long were you in the plaintiffs' timber?

A. Principally most of the time. Of course, we spent some time, a little time, down at Clallam.

Q. I think you stated a moment ago that you were down at the Straits' timber two days, did you not?

A. No, parts of two days; two pieces of two days, not two whole days. Two pieces of two days, down around the Goodyear's timber. I was down in there looking over the idea, and how it looked, and there is where he is working now.

Q. When you got out to examine this timber, who determined where stops would be made and what timber should be examined, yourself, or the parties who were conducting the party?

A. No, sir, we stopped for section lines, and for section corners, so as to locate ourselves on that map; because I could not tell anything about any map, or where I was in the woods, unless I could find a Government corner; so I could read it and know where I was, and what township I was in.

Q. In saying that the interior lands have, in your opinion, the same value as the lands on the exterior, you took into consideration the fact that there is a longer haul?

A. Yes, sir.

Q. And a greater cost of operation?

A. I differ with you. I take it that there is not. That the greater cost of operating is out there on the Straits. After the plant is in there the only difference there is that you will operate cheaper on good lands, than you will on the rough country. Where you are building roads up through mountains and have quite steep grades, and high cliffs to take off, it costs more to actually put the logs on the railroad after the plant is in.

Q. When you went into the timber did you go into what is called the Callawa country?

A. Not all of it; some portions of it.

Q. Did you go up in the hills; did you go very far away from the traveled road?

A. We were in township 29, range 13, in township 30, range 13—no, 29, range 12, and township 30, range 12.

Q. Would you say those sections are in Callawa country?

A. Yes, sir, we went up one branch of the Sol Duc until we got up to the point where the water turns and runs the other direction, and goes down the other way.

Q. Would you give me those section numbers again, or township numbers?

A. We were in township 28, range 13, 28-14, 29-13, 29-12, and 30-12.

Q. You made an observation of all those townships, did you?

A. Some, yes sir. Don't think that I went all through each one of those five acres; we went through some parts of it.

Q. How extensive would be your examination in each township?

A. We would take up a few sections here and a few sections there, you know.

Upon referring to the map, plaintiffs' exhibit A, witness says he did not go into the Callawa country. They took the automobile road at Lake Crescent and followed it down to the Forks, to the Quillayute and back up to Clallam Bay.

Q. In saying that the value of this timber in the interior is as great as that on the Straits, did you take into consideration that this timber had to be hauled out a good many miles before it got to the Straits?

A. My experience is that after your plant is in that the transportation itself, does not cut much ice in the logging. That is not the expensive part of it; after the plant is built. It is the operating, the kind of ground that you have to operate on, and the expense is in the operation itself on the ground. After you get your logs loaded on the cars——

Q. Didn't you take into consideration the upkeep of your road and the necessity of keeping up your rolling stock and equipment and the cost of bringing out those logs?

A. I would over-balance that by the different localities you log in; that is not the expensive part of it, that is, that that is on the Straits is in a rough and broken country, and you have to have steep grades and high points to take your timber off, narrow canyons to build your roads in, and every time you fell a tree it will fill the canyon up, and you have to dispose of that, and it is expensive in a rough country, while in a nice smooth country you can build an inexpensive road and you can work right along and get more logs and do it for a whole lot less money.

Q. Did you visit the timber where logging operations were going on, through which a railroad is already built; did you go into that timber?

A. You mean the Mike Earles timber?

Q. Yes, sir.

A. No, sir, I did not go in there.

Q. You testified that the timber on the Straits is worth in the stump the same as this on the side; would you say that the timber in which the railroad has been built is worth no more than when the road was never built?

A. I do not know about that; I was never in it.

Q. Would you say if this railroad was built down to the Pysht River that still this timber in here is not worth any more than the timber in the interior?

A. I will say that the Lacey timber is worth just as much as the Goodyear timber.

Q. I am asking you to compare it with the timber on the Pysht river?

A. Yes, sir; just the same thing. It is all the same kind of timber.

Q. Would it make any difference if the railroad was built into it?

A. No, sir. I believe you can log the interior timber off for less money than you can in front; that is, the fir, cedar and spruce. I don't put any value on the hemlock at all. I don't think there is any.

Witness took some elevations in the Callawa country, going up the creek after he left the Sol Duc. The highest point he found there was 765 feet. Witness did not figure out how the timber could be brought out of the Callawa river country. Was not down that far. He is only giving his estimate on the timber that he actually saw. He did not see the Callawa timber. In making this estimate he had in view the outlet to which the timber could be taken down to the Pysht river or to Clallam Bay. The witness proposed to transport the logs to Pysht or to Clallam and tow the logs from there to the mills. Witness estimated the cost of building a road from Clallam Bay or from Pysht river to the plaintiffs' timber. Figured it out on paper, but did not make any memoranda. Did not figure on the route to Port Angeles. In figuring on bringing it out to Pysht river the witness did not take into consideration that both sides of the river were owned by one company.

The witness says that it would make no difference, in his opinion, as to the value of the interior lands that the water front at Pysht river and Clallam Bay was already owned by other parties so that the timber could not be taken out that way. Nor the fact that there was no point of access from the Straits. Witness could not say what proportion of the plaintiffs' lands were level or what proportion of them were rough, but had based his judgment on the assumption

that the lands of the interior were more level than those on the Straits.

Witness has no knowledge of any sales of timber in the interior country within the last five years. Witness does not know of any sale of any timber lands having taken place in Clallam county for more than \$1.00 a thousand. He only knows of one sale having occurred some four or five years ago in Clallam county; does not know of any since. Witness knows of nothing that has occurred within the last five years that would raise the value of the timber on interior lands in Clallam county.

On re-direct examination the witness says:

That railroads must be used in the logging of the Straits timber as well as the timber in the interior.

On re-cross examination, the witness says that when down in the timber he noticed old burns of timber, lots of them, in the interior, and in going out from the Sol Duc valley to Clallam he noticed a very extensive burn. That after reaching the summit and going towards the Straits he did not notice any burns on the Straits side of the summit to amount to anything.

On re-direct examination by the defendant the witness says that the elevation of the pass between Beaver Prairie and Callawa river was 765 feet; that the elevation of Beaver Prairie was 425 feet; so that the pass was elevated 345 feet above the level of the prairie. The witness was not as far down as the Callawa river. Where the water commences to run down that way, we were in 10 and 11, 14 and 15, at that point. The character of the timber and the nature of the land in zone No. 2, being lands of the plaintiff along the Sol Duc river, and between the Callawa and the Sol Duc, were the best the witness had ever seen; as good as anybody has. The logging conditions were fine. Witness did not think that persons driving in an automobile from Clallam to Forks and back up to the Sol Duc Hot Springs, could form an accurate opinion as to the quality and quantity and character of timber within these zones unless they went out into the timber

some. Thinks that the fire risks upon the timber lands of the interior was a little greater than on the Straits timber.

Charles McGuire, a witness for the defendants, being sworn, testified:

He is a timber cruiser, buyer and seller. Is in the employ of one of the Eastern timber buyers and has been for several years; and is familiar with the value of timber in Western Washington; and with logging operations and logging camps; and is interested in some. Has made examination and inspection upon the ground of some of the plaintiffs' timber lands, and has been over the timber of the Puget Mills & Timber Company, the Milwaukee holdings, the holdings of Merrill and Ring and the Goodyear holdings lying along the Straits in zone No. 1. What the witness saw of plaintiffs' timber along the Sol Duc valley is good timber of good quality and good ground to log. This is in zone No. 2. The timber lands in zone No. 3 were more rolling and rougher, but the usual methods would log it. The lands along the Straits are much more cut up with ravines and narrow canyons than back in the interior. In going through these timber lands in the interior and in the Straits zone, witness observed the character of the country and took aneroid readings of the elevations with a view to determining what it would cost to build a railroad. The land in zone No. 2 on the Sol Duc river and west of Forks would be agriculture land when it was logged off. Witness was in the court room when R. H. Thompson, an engineer, testified with reference to building a railroad from the interior to Pysht river or Clallam Bay. In the witness' judgment there would be but very little difference in the cost of placing the timber from the interior in water of the Straits as compared with the timber in the Straits Zone. The plaintiffs' timber in the interior, on March 1, 1912, was of the value of \$2.00 a thousand. The Straits timber, in zone 1, was of about the same value. The witness' opinion is based upon the county cruises and upon what

he saw when down in the timber. Witness was down in the neighborhood of the timber five days. Went from Lake Crescent on the county road in company with one of the commissioners. He had the cruises and had run a compass through that country. At different places they stopped and picked up the section lines and went out to the corners so as to be assured of the ground they were on and took a general look around as to the quantity and quality of timber that was standing. At one place they were probably six miles away from the wagon road. Witness was on sections ten, eleven, 14 and 15, of township 29. Also sections 23 and 24. The witness was of the opinion that a person riding in an automobile from Clallam to Forks and back up the road to the Sol Duc Hot Springs could form an accurate opinion as to the character, quality and quantity of timber within the zones or the logging conditions concerning them. The valuation of timber lands in 1914 would be about the same as in 1912, both as to the Straits and the interior, viz., \$2.00 per thousand feet. Witness is not connected with the Merrill and Ring or the Milwaukee Land Company, or the Puget Mills and Timber Company, or the Lacey Timber Company.

After the recess the witness now expresses the opinion that while one riding in an automobile through this timber could form an opinion it would not be as good an opinion as going into the timber away from the road in different places

On cross examination the witness admits that he did work for the T. M. Ring Logging Company at one time, which is a branch company of Merrill and Ring and also for the Continental Timber Company, which was another name for the Milwaukee Timber Company. Did cruising for them. Considerable cruising, in Clallam county, at Twin rivers and Pysht river, along the Straits. Did some cruising in the interior in 1912 and 1913, for the Menachi Woodenware Company of Wisconsin. This timber was near Lake Crescent. Witness looked over two quarter sections. Also a cruise was made on the Hoko river for Mr. Blacker

of Everett in 1912. This was 120 acres. Had cruised lands for the Continental Timber Company and the Milwaukee Railroad Company from two to three months. Straits timber. But has never been down in the interior timber except the six days' trip referred to during which practically all of the time was spent in the timber. Witness was conducting a logging operation in Idaho in the year 1893, 1894, 1895, logging yellow pine and white pine. And was engaged in the mill business for about fifteen years, getting out from 15,000 to 50,000 feet a day. Afterwards witness was with the Blue Mountain Lumber Company in Washington in Asotin county, and is logging in Jefferson county now near Port Ludlow.

Witness looks after the cutting of the timber. The timber has to be transported over railroad five and a half to six miles long. Witness went over the Clallam County Lands with the other witnesses who have testified for the defendants. Witness examined the County cruises before this visit, and also afterwards. He found the books in the court house at Port Angeles. He was with the assessor, Mr. Riddell, and Mr. Frost part of the time. The Lacey holdings were shown to witness on the map. He took different sections, seeing how the timber averaged, and took it from the cruises and the quality of the timber. Witness made no memorandum of this; made a compilation of the timber run on two sections, Sections 31 and 32, Township 30, Range 12, W. Some one called witness' attention to it and said it was the largest sections in the county. Witness looked over the cruises at the time, then went on the sections personally after he went down there. Witness did not pick out any of the smallest sections of the Lacey people; just picked them out as he leafed over the book; did not pay so much attention to the grade of the timber as he did to the quantity. Witness took a number of sections and added them together to find out what they averaged, and when he came back he found them on the county cruises substantially as he had averaged them.

Witness, at request of plaintiff's counsel, produces

a memorandum book in which he had made memoranda of this information, showing the run of Sections 31 and 32, Township 30, Range 12 W., Section 31, as 107,885,000 feet, and Section 32, 107,883,000 feet.

Q. When did you make this memoranda?

A. I have the date on the book, I think, on the 8th month, and the 14th day of 1915.

Q. On August 14 of this year?

A. Yes sir.

Q. Did you make any other memoranda in connection with this matter at that time?

A. Yes sir.

Q. Show me all the memoranda that you made in connection with your examination?

A. While we were finishing that township I went through those two sections. I saw both quarter posts on both sides of both sections. I counted up different acres, and half acres, trying to satisfy myself that that amount of timber that the cruise showed was on the ground.

Q. That is with respect to those sections 30 and 31?

A. Yes sir.

Q. I ask you, however, what other memoranda you made in connection with your investigation?

A. Township 29, range 13 West.

Q. What did you put down there?

A. On Section 32?

Q. What investigation did you make of that?

A. I was at the quarter post between 32 and 5, township 28, range 13.

Q. What was the occasion of picking out that particular section, or was that just by chance?

A. In going through the land coming close to the road, and I wanted to be sure what ground I was on and I was looking at the timber far—I went out to those corners for that reason.

Q. Did you make any other memorandum than what was contained in that little book which you have?

A. No sir, I did not.

Q. Will you show me all the memoranda that you made with respect to your investigations?

A. I gave the distance in this book.

Q. I mean, in the book; will you show me the pages containing it?

A. It is not paged. I gave the distances to the corners.

Q. Show me the writings. I want to see the writings themselves.

A. Here. (Handing witness book.)

Q. That is another page, and you showed me this one here.

A. You can read that.

Q. This is the first one you showed me?

A. Yes sir.

Q. This is the second one?

A. Yes sir.

Q. What else?

A. They are scattered along through the book, in different townships. Here is another. I made different notes.

Q. This book contains all this memoranda?

A. Yes sir.

Q. Is there any objection to my looking at this?

A. Nothing private.

Q. I think I can show you here in a minute—

A. I have got other timber in there.

Q. I would not know anything about it anyhow.

A. I can assist you in getting to it.

Q. If you will; just fold the papers where you have any private information not concerning this matter, and I will respect it. (Witness folding pages.)

Q. Between those pages that are folded down?

A. Yes sir, some of those is abbreviated. You may have trouble, and have to ask me to explain it.

Q. (Mr. Peters looking at memorandum book) This, that you have first referred to is a fair sample, is it not, of the memoranda that you have here, the page that you read, from Sections 31 and 32?

A. Yes sir, practically that kind of information.

Witness made no table of the run of any large

number of sections of the plaintiff's lands, and did not average or tabulate the quality or the grade of logs in that area of sections, but formed his opinion on the grades from what he saw. Witness would take an individual section here and there and put it down as Sections 9, 10, and 11, 2 and 3, followed by the words "Rough ground", "Timber rough".

Q. And put it down as you have here, sections 9, 10, 11, 2 and 3; now, you have, "rough ground", "timber rough," that is referring to sections 31 and 32, is it?

A. No sir.

Q. What does it mean?

A. That refers to the sections that you read about, sections 9, 10, 11, 2 and 3.

Q. What about those?

A. They are higher on the mountain and what we call rough, rolling ground; that is, for a short note, what I would call it, rough. The others are level ground.

Q. Where does it say that the others are level ground?

A. It does not say it. I was on that and saw for myself.

Q. Were you not on those which you put down as rough?

A. Only just going through on the road.

Q. You noted there that that was rough ground?

A. Yes sir.

Q. Those five sections were rough, and these two sections were level?

A. Yes sir, that is what I saw from the road. That is near Beaver Lake, and near the divide.

Q. On this next page, I see Section 32, 37,000,-000, is that it?

A. Yes sir.

Q. That is designated as rough?

A. That timber is not as good quality as the other.

Q. That timber you put down as rough, or is it the ground that is rough?

A. The timber.

Q. What do you mean when you say "the timber is rough"?

A. It limbs down closer to the ground and not as good quality, that is what we call "smooth timber". You see some marked, "extra good quality."

Q. These, then, were all the memoranda that you made?

A. Yes sir.

Q. Now, you haven't any such recollection from your examination of the cruise sheet of the County, that you could take any series of sections and tell now what the run of the timber was, and what the quality of the timber was and what the grade of the timber was, have you?

A. I can give you the amount, I think, on four sections together that I was on and looked at.

Q. The amounts. I haven't any controversy as to the amounts. You found that the amounts you cruised out there substantially agreed with the County, did you not, as to the amounts?

A. Yes sir.

Q. I am asking you about the quality and the grade?

A. Well, sections 31 and 32, I can give you I think, from a memorandum, the way I saw it it was graded on the cruises.

Q. That is the ones you have just referred to now, is it not?

A. Sections 31 and 32, the two largest sections.

Q. Those are the ones you just referred to?

A. Yes sir.

Q. Now, any others?

A. I do not think I could grade any others from the County cruises. I can give you my own opinion on the grade.

Q. You were down there, of course, to give the benefit of your investigations to the court in this case, were you not?

A. No sir; when I went down I was asked to

go down by Judge Frost and form my honest opinion regarding the value of the timber.

Q. You knew there was litigation on?

A. Well, I was told there was litigation on.

Q. You knew that before you went down?

A. Yes, sir.

Q. Did you make any memoranda with respect to the lands on the Straits, the timber lands?

A. Only in just comparing the cruises.

Q. Did you make any memoranda in that book with reference to those?

A. No sir, I have not.

Q. You have not?

A. No, sir.

Q. Where are those memoranda?

A. I did not make any memoranda, just an opinion in comparing the cruises, of the county cruises, looking over part of the Lacey holdings, and looking over a part of the Merrill & Ring holdings, and getting different grades to see how the timber averaged one tract with the other.

Q. Now, how large a tract did you take in order to find that out?

A. I think I took some ten or twelve sections of the Merrill & Ring holdings.

Q. Which ones did you take?

A. I did not make no note of it, and I cannot give you that exactly.

Q. Which ones did you compare those with of the Lacey holdings?

A. With what I saw of the Lacey holdings.

Q. With the whole Lacey holdings?

A. No, sir, with what sections I was on, that I saw.

Q. How many sections were you on?

A. Well, the road practically runs through it. I could not give you the number of sections. I don't know as I counted them up. I can tell from my book the amount of the corners I was through, that would show the sections I saw.

Q. Didn't you make any memoranda of the

amount of timber on the Merrill & Ring, or any of the Straits properties?

A. No memoranda, only just looked it over.

Q. How close an investigation did you give of the situation along the Straits?

A. I just made a comparison from the records.

Q. I am referring to your being personally on the ground?

A. Well, I have been on the Pysht River, through part of the Merrill & Ring timber. I have been through the Milwaukee timber, parts of it, and parts of Michael Earles' timber.

Q. What is the comparison between the Straits timber and the Merrill & Ring timber and the Good-year timber, and the Lacey Company timber, in the interior, respecting age?

A. Part of the Merrill & Ring timber is a little older.

Q. Does that make it better timber, or not?

A. No, sir, some of the timber in that tract in on the decline. I would prefer for myself timber in the interior as for quality.

Q. For what reason?

A. In all timber there is always more or less defect with ground rot, and wind shake, and dead tops.

Q. That is taken account of in the county cruises, isn't it, and allowed for?

A. Yes, sir. I want to say in the county cruises, I also took into consideration——

Q. Wasn't it taken into consideration in the county cruises?

A. I think the different counties has different rules. I think it should be. I could not say, because I did not do any cruising for the county.

Q. No, but you went over the books and looked at them?

A. Yes, sir.

Q. Did you assume that they had taken into account all the stump rot, and other features you referred to?

A. Yes, sir, I would suppose they made a deduction for that.

Q. Then the showing in the book here would exclude those, the criuses, wouldn't they?

A. They should.

Q. Yet, in your comparison you charged them up to property in the interior, as if they were not taken into consideration?

A. No, sir, I am not speaking from that. Probably you did not understand my answer. This timber being on the decline I would prefer the timber in the interior.

Q. Which part of the timber in the interior is on the decline?

A. Some of the timber on the Pysht River. The Goodyear timber is ripe and has been for years.

Q. Which would you consider is the better timber, the timber which ran, where we are speaking of, fir, 48% No. 1, 30% merchantable, and 22% No. 3, or that fir timber which ran 35% No. 1, 42% merchantable, and 23% No. 3; which would you consider the better class of timber?

A. On the log market today the first you read.

Q. What would that indicate as to the age of the timber; which would be the older timber, the first class I read, or the second class?

A. I think there would be a great deal of difference, in different localities of the ground. The second timber which you read may have been just as old as the other, and grade a different soil, and rougher timber.

Q. Do you think the first class would be the more valuable timber?

A. Yes sir.

Witness has never himself made any sales of timber lands in the interior of Clallam County, and does not know of any such sales being made; considers the hemlock which witness saw of very little value, in either the interior or the Straits timber. In this territory the aneroid showed an elevation of 765 feet along the Callawa River, and an elevation of 825 on the

divide between the Sol Duc Valley and Clallam Bay. The country about the Callawa is rough and broken. None of the Lacey timber is on what witness would call rugged ground, but as to whether or not it was on rough ground witness did not go over enough of it to pass an opinion on that. the witness says in forming my judgment I kept the tract in my opinion from the tract as a whole. Witness has been through the Mike Earles' tract, and would not estimate any difference in the valuation between this timber and the Merrill & Ring timber, in 1912, and they have not changed in value in the year 1914, and this timber is about the same as the Goodyear timber. Witness, in making this estimate has taken into consideration that the Mike Earles' timber is now being operated, and is upon a railroad. "He is paying the railroad freight there to get that timber out, and I do not consider it any more valuable than the timber in the interior, because there is enough in the interior to justify putting in a road to log it".

Q. I am comparing at the present time the Mike Earles' timber and the timber on the Pysht and the Merrill-Ring timber, and the Goodyear timber; you do not consider the Mike Earles' timber of any greater value by reason of having that railroad there because they have to pay the freight than you do the timber on the Pysht, and the timber of the Goodyear people?

A. No sir, I do not.

Q. Then you think that the Merrill & Ring timber and the timber of the Goodyear's has better facilities for logging cheaper?

A. They are much the same.

Q. Much the same what?

A. As the Mike Earles timber.

Q. Then you would say that the character and quality of the Goodyear timber, and the timber of Merrill & Ring, and the facilities for present operation were the same in your judgment as the character and quality and facilities for operation as the Mike Earles' property?

A. In regard to value. I do not think the rail-

road adds any valuation to Mike Earles' timber.

Q. And it is based upon that same consideration, isn't it, that you figure that the lands of the Lacey people in the interior are of greater value, or of equal value to that you stated, as the lands of Merrill-Ring and of the other land?

A. Yes, sir.

Q. The fact of being in the interior or without a railroad as in the exterior with a railroad cuts no figure in your judgment as to valuation?

A. Not in large holdings. As a general thing the logger puts in his own railroad.

Q. In your judgment the Lacey people, you have a memorandum there, have you not, showing that the Lacey people have some forty-one thousand acres?

A. Yes sir.

Q. In your judgment if they had eighty thousand acres it would be twice as valuable because of the size of the tract?

A. Yes, sir; I would add more value to the big tract of timber. The bigger the tract of timber I could get hold of I think there is more value.

MR. FROST: He is misleading the witness. You do not mean by that it would be worth twice as much—

MR. PETERS: Wait a minute, about misleading the witness. State what you understood me to say, and give your answer.

A. I understood you to say, if it would be more valuable by a larger tract.

Q. That is what I asked you.

MR. FROST: He said would it be twice as valuable.

WITNESS: I did not so understand.

MR. PETERS: Answer it.

WITNESS: Read it.

MR. PETERS: I want you to take time to answer the question, to answer the question as you understood if you have forty-one thousand acres of timber lands and those same holdings had eighty thousand

acres of timber lands, would you say the bigger holdings would be the more valuable?

A. Yes sir, the bigger holdings would be the more valuable.

Q. Why?

A. After the road was built it would reduce the cost of the road by hauling out that many more feet on the same railroad.

Q. What did you consider as to the estimate of the cost of the road?

A. I did not figure it and form an opinion.

Q. What would you form the opinion as to the cost of such a road?

A. In the neighborhood of eight or ten thousand dollars a mile,

Q. How many miles would you figure?

A. That depends on where it would go out at.

Q. Where did you figure so as to take into account the effect of that high value of the timber?

A. Clallam Bay.

Q. How many miles did you figure the road to be at ten thousand dollars a mile?

A. It takes about 12 miles of road to reach in the edge of the Lacey holdings from Clallam Bay.

Q. And you figure one hundred and twenty thousand dollars?

A. I said from eight to ten thousand dollars.

Q. Then from ninety-six thousand to one hundred and twenty thousand would be your estimate of the cost of the road?

A. Practically, yes.

Q. What did you figure the equipment?

A. I did not figure it. I said I formed an opinion.

Q. What did you form your opinion as to the equipment?

A. That would depend on what you were going to log and what the output would be per year, how many million you were going to put in.

Q. What was your estimate of the yearly logging?

A. My opinion, to make it profitable, in tracts of that size. to make it profitable, it would be from one hundred and fifty, to two hundred million a year.

Q. What would be necessary to carry on such logging operations?

A. It would take about four locomotives, and ten or eleven donkeys.

Q. Did you ever formulate in your own mind any sum of the cost of a railroad and the equipment to put in, to add to the cost of this timber in estimating its comparative value with the timber on the outside?

A. Yes sir, I did.

Q. Give it to us?

A. I think I form an opinion that 10c a thousand would build the road and pay for putting the road in there.

Q. On how much timber did you estimate?

THE COURT: What difference did you make between building the road and putting it in there?

A. I put it in and ready to log that distance, in the neighborhood of about three million feet of timber.

Q. You mean, to equip the road ready to haul logs by putting it in; you said building a road and putting it in. Did you mean by that putting in a road and laying the equipment?

A. Yes sir, additional cost would not be over 10c a thousand feet.

Q. Additional cost of what?

A. Of putting the road in and logging the timber.

Q. Then what is, in your judgment, the total cost of putting the road in and logging the timber?

A. I don't know as I understand your question.

MR. PETERS: Strike that question out.

Q. What did you intend the 10c a thousand to cover?

A. The cost of building the road, the railroad into the tract of timber.

Q. Building a railroad into the tract of timber?

A. Yes, sir.

Q. Now, what did you figure, if anything, in addition to 10c a thousand for equipment?

A. I would not take that into consideration of making a difference between the timber in front, that we have been speaking of, and the timber in the interior, because you would have to have equipment for logging either.

Q. I am not asking you to make a difference; I am asking you what you would pay for the equipment for taking that timber out?

A. Depending entirely on the output.

Q. And you figure one hundred to two hundred million a year, take it on that basis?

A. Do you want me to give the aggregate?

Q. Just the aggregate; I do not care about the details of it; what would you figure it?

A. Well, the four locomotives would cost about \$10,000.00 apiece; the donkey engines range in different prices, say about \$4,000.00 apiece equipped. I think relay steel runs from 29 to \$30.00 a ton; the cost of ties for the track would probably run for a logging road, that they could be made along the track for about 25 to 30c a tie; the fishplates and spikes would likely run about \$500.00 a mile.

Q. You were here when Mr. Chisholm testified on that same matter this morning, weren't you?

A. Yes sir.

Q. You heard his testimony?

A. Yes sir.

Q. And you are giving now everything you heard him testify?

A. No, sir; I know practically about what those things cost.

Q. You never made any memoranda of it anywhere?

A. No, sir.

Q. Did you ever buy a locomotive for logging?

A. Yes, sir.

Q. Suppose this timber in the interior situated as it is, was a tract of 160 acres, instead of 41,000 acres, what would you say would be its value per thou-

sand; that is of the same average grade and quality, and the same average stand per acre?

A. I would not consider it to have the same value.

Q. What would you say would be its value?

A. A small tract that way, it is hard to sell, except to a merchantable logger, and when they get to it they give you whatever they want to. It is pretty hard to value a tract in the interior.

Q. Would you say that to be worth very much more in proportion to the 41,000?

A. I think I said that the large tract of timber is worth more than the small tract, yes, sir.

Q. How much in proportion?

MR. FROST: The witness said he can't form an opinion.

MR. PETERS: If he can't, let him say so.

A. I would not care to set a value on the small tract.

Q. You would not do what?

A. I would not care to set a value on the small tract.

Q. What was your judgment as to the manner in which this timber in the interior was eventually to be taken out as the most economical method?

A. By railroad to Port Angeles.

Q. How long did you figure that road in length?

A. I do not know that I figured it close. I think all that country, all of that timber ought to go out by railroad."

Witness says that the price of fir logs in the Washington market in 1912, was six, nine, and twelve dollars; they ran from six, eight and eleven, to six, nine and twelve. They have not sold for more than that price since that date. Witness does not think that the logged market sagged from March, 1913, to March 1914, but has remained about the same. When down in this country witness observed two large burns, one west and north of Lake Crescent about fifteen miles long, and a burn in the Sol Duc valley. The area of this, so much as the plaintiff could see of it, was from 40 to 80 acres. There is also a burn after

crossing the divide and going into Clallam towards the Straits timber. There is a burn in and around Beaver Lake, in places. This is on the side of the Divide towards the Sol Duc river, witness thinks.

Witness states that the fire risk to the timber in the interior is not greater than to the timber along the Straits. The timber in the Sol Duc valley is on level ground, is practically free from underbrush, and would be hard to burn. Timber is more subject to fire risk that is on rough and hilly ground. Witness does not know anything about the fog belt, or rainfall on the Straits or in the interior land; thinks that the claim which is made that timber on the Straits in Clallam County is protected by the fog belt from fire applies equally to all of Clallam County; thinks the interior lands have plenty of rain fall for fire protection; does not think that the amount of rainfall would affect the value of the timber.

Q. Well, you were down there in this timber, and you went out in Clallam Bay, and spent the night over in there, did you not?

A. We were at Clallam Bay two nights.

Q. You did not spend the night in the timber?

A. No sir.

Q. So that the time that you were down there and the time investigating the timber you would deduct that from the time in coming in and going out?

A. That was most of the time after night going in. We had daylight to come out on, but we hardly ever left the timber until it was almost getting dark. I think one evening we went in before we had the lights turned on.

RE DIRECT EXAMINATION

Witness when asked how the timber of plaintiffs compared with other timber in Clallam County, says, "It is the best tract of timber" he has ever seen.

(Witness excused.)

C. I. WANNAMAKER, sworn as a witness on behalf of the defendants testified as follows:

DIRECT EXAMINATION

He lives at Port Townsend, in Jefferson County, is a merchant, interested in logging camp, is chairman of the Board of County Commissioners; at one time conducted logging operations on the Hoko River, and West Clallam. Logs were put into the salt water at the mouth of the Hoko, and West Clallam into the Clallam Bay; been engaged for about eight years in the logging business in the State of Washington, is familiar to a certain extent, with logging methods; has bought timber in Clallam County, has recently made an investigation of the plaintiffs lands on the interior of Clallam County and is familiar with the timber in the Straits zone, and is familiar with the physical characteristics of the country in the Straits zone and in the interior, to a certain extent. Witness has been across from Clallam Bay over to what is known as Burns Mountain, near Sol Duc and around Forks, and observed the physical characteristics of the country with reference to the possibility of railroad, and the character and condition of the soil, and considers that the relative cost of placing logs cut from the timber in the Straits zone into the Straits compared with the cost of timber cut from the interior zone and put into the Straits is practically the same. The value of the plaintiffs timber known as the Lacey holdings on the the first of March, 1912, was from \$1.75 to \$2.00 a thousand, and about the same March 1st, 1914. The timber in the Straits zone at the same periods was worth substantially the same. Witness has made some examination of the county cruises of Clallam County, and is familiar with them to some extent.

CROSS EXAMINATION

On Cross examination witness testifies the property that he was operating on Clallam Bay was near the Goodyear people. Witness operated at West Clallam and around East Clallam; owns some property there at the present time; he also operated on the Hoko River, on 80 acres belonging to Mr. Seymour of

Tacoma, and on the property of a Mr. Talbot, and on the property of a Mr. Johnson. Has been engaged in logging for eight years, three years of that time being at Clallam Bay. In that period he logged off five or six hundred acres, about 10,000,000 feet of logs. Witness had no railroad. The farthest back from the edge of the Bluff that witness went was about a mile and a half; that is, on the Hoko River, and on Clallam Bay, about three quarters of a mile, and in neither case did he have a railroad. He boomed his logs in Clallam Bay. Witness figures that it cost him four to six dollars a thousand to log those six hundred acres. Witness saw the timber of plaintiffs in the interior in the month of August last, went down with the other witnesses of the defendant, made substantially the same sort of an investigation, made no memoranda at the time, and made no tabulations of the run of any given number of sections of the interior tract, or of the Straits timber. Witness examined the county cruises recently with reference to the lands in controversy last month, just before going out on the investigation tour. No one indicated to him what particular sections to examine. He just looked over the cruise books, and would see what was shown on some one page with respect to the sections; looked them over to see how much timber there was in the different sections; did not look over the cruises of the Straits timber at that time; had looked these over in 1912 and 1913, on an entirely different occasion. At that time, he was looking up timber for purchasing himself. Did not examine the cruise Merrill & Ring timber in 1912 and 1913, but had been over that timber at that time. Did not examine the cruises of the Goodyear timber.

“Q. At this time you could not tell from your memory, take any group of sections, as to the amount of timber on these interior lands, or the grade or quality of the timber, or other details, shown on these sheets of the cruises,?”

A. I did not understand you.

Q. (Question read)

A. I was in there just to see the quality of the timber, what I noticed, the character of the land that it was on.

Q. And after leafing over and looking at the individual sections you then went down into the timber?

A. Yes sir.

Q. The purpose largely was to see whether their timber had been fairly cruised, or not, was it not?

A. That is the idea.

Q. That is why you had looked at these sheets before you went down?

A. Yes sir.

Q. Now, did you take along with you any memoranda of what any particular sections run?

A. I had no memoranda.

Q. Did you go back and look at the sheets after you returned?

A. No; I was not in Angeles afterwards.

Q. How could you tell then, how accurate the cruise was?

A. I remembered some of the cruises on the different sections.

Q. You were investigating the area of some 41,000 acres of land, were you not?

A. I do not know how much land there was in it.

Q. Didn't you have this map of the defendants that stands here with the lands colored in green, didn't you have that with you on the grounds?

A. Yes sir.

Q. And you were investigating that entire tract colored in green, were you not?

A. A good part of it; that is, drove through it, where the road goes through, and stopped on several occasions and went into the timber.

Q. And you did it all by comparison from what you carried in your head from an examination of those books before you went down, so far as any comparison was concerned?

A. So far as any comparison was concerned."

Witness put no value upon the hemlock either in

1912, or 1914. This is true of the lands both in the interior and those on the straits.

Q. Suppose that the lands of the plaintiffs here, in the interior, were taken out of where they are now lying, and put along side the lands on the Straits, here, what would you say as to the relative value of the timber in the two tracts?

A. They would be no more valuable on the Straits than they are where they are.

Q. Why not?

A. The character of the shoreland, getting that timber to the Harbor. There are only two or three harbors along that coast.

Q. Let's take that comparison, before we go into this phase of the case. What I would really ask you is, what would you say as to the comparative value between the Lacey tract and the Straits' timber, if they were supposed to be taken out of the interior and placed along the Straits timber in the same relative situation?

A. Practically the same value.

Q. And you regard the timber then as of the same character and quality?

A. Practically the same.

Q. How about the grade?

A. I would judge about the same grade.

Q. And you think that they are of the same market value situated down there today and taken in 1912 as they would be out upon the Straits?

A. I do.

Thinks the fire risks is about the same in each tract. The effect of a burn of a considerable area in the Straits timber, and a similar burn in the interior timber will be substantially the same, because you have to move the timber on the Straits to some place where the logs can be held, and the same is true of the interior, because a logging railroad would have to be built in each case. The difference in the cost of a road will be the question of its length. It will take a road, according to witness' estimate, to go down into the interior timber, 18 miles long, from the mouth of the

Pysht River, Witness would not consider this any advantage in favor of timber land lying right on the Pysht River as against the lands in the interior, or, very little difference.

“Q. You want us to understand that in your judgment the lands lying immediately around the Pysht River which are supposed to be logged into the Pysht River are just as valuable so far as accessibility is concerned and no more valuable than the lands in the interior that would have to be hauled by railroad 18 miles in length, yet to be built, that is your judgment, is it?

A. Yes sir.

Q. Do you know of any timber that has ever been sold in the interior of Clallam County, for any such price as you put upon it, \$1.75 a thousand?

A. I don't know of any being sold.

Q. Do you know of any that has ever been sold in the interior of Clallam County for more than \$1.00 a thousand, fir, spruce or cedar?

A. I don't know of any sales being made there.

Q. Do I understand that you don't know of any sales ever being made at any price in the interior?

A. Not to my knowledge.

Q. Then your judgment of the values which you have given is not based upon your knowledge of any purchase or sale of any such timber in Clallam County?

A. It is not based on that, no.

RE-DIRECT EXAMINATION

BY MR. EWING:

Q. Can you identify the map to which reference has been made as the map which you had with you on that trip? Is that the same one?

A. The same one I think.

Q. Speaking of this timber lands, you purchased timber lands in Clallam County yourself, did you not?

A. Yes, sir.

Q. How did the timber on that land compare with the Lacey timber?

MR. PETERS: I object to that.

MR. EWING: Well, you can object to it, when we want to bring it out.

MR. PETERS: I was directing my remarks to the court.

THE COURT: As a rule that would be cross examination for Mr. Peters, as illustrating anything. It might be re-direct, but not for eliciting any particular sale.

MR. RIDDELL: That is the point, Your Honor, when they have forgotten something, to get it out, I think the courtesy ought to go both ways.

MR. PETERS: I made no such objection. You can take it up in any order that you want. In doing that, I would make it as the Court rules, coming from your own witness.

MR. EWING: It would not be proper., as the Court stated, unless Mr. Peters brought it out. He asked about the sale, and we will show you the sale.

THE COURT: The objection is sustained.

MR. EWING: Note an exception.

MR. EWING: We offer to prove by this witness that the timber that he purchased was not as good in the character and quality of the timber of the Laceys, that he purchased in 1912 and '13, that he paid \$2.00 a thousand for, so that he does know about the values from sales that he is actually familiar with.

THE COURT: The offer is denied.

MR. EWING: Note an exception.

THE COURT: Exception allowed.

Q. How does this timber contained in the Lacey tract, as you saw it, how does that body of timber compare with other bodies of timber that you have seen, and become familiar with in Clallam County?

MR. PETERS: I object to that as being too general. There would be no way in the world of our measuring the value of his timber. He is comparing it with other bodies he has seen and is familiar with.

MR. EWING: In Clallam County?

MR. PETERS: That would not do us any good. Your Honor might take two tracts of land as set out before the Court, and compare them with what he has

seen is too general. And to turn the witness loose would be a comparison that we could not meet.

THE COURT: The objection is overruled.

MR. PETERS: Note an exception.

THE COURT: Exception allowed.

A. It is the best tract of timber that I ever saw. (Witness excused.)”

R. D. MERRILL, sworn as a witness on behalf of the defendants testified as follows:

DIRECT EXAMINATION

Witness resides in Seattle, is engaged in the logging, timber and lumber business.

Plaintiffs concede Mr. Merrill qualifications as an expert; witness is a member of the firm of Merrill & Ring, owners of an extensive body of timber in Clallam County. He is familiar with the land known as “Straits Zone”, or “Zone No. 1”, on the map, exhibit “A”, and also with that of the plaintiffs, also with the character of the land upon which the timber stands. Witness states that the following elements are taken into consideration in arriving at the market value of timber.

“A. There are a number of elements or factors, the cost of operating, the quality of the timber, the cost of operating, of course, depends on a number of conditions, which are, the lay of the ground, quantity of timber per acre, the character of timber, whether there is water for donkey engines, or things of that kind, and the character of the soil, and stand per acre. I do not know whether I mentioned that or not.

Q. What is the last?

A. The stand per acre; the amount of timber on the ground. If the ground is broken, of course, it would make a difference in the cost of falling and hauling. If the ground is level it is less broken and easier to get to railroads, and easier to build railroads, and get the logs to a railroad, and cheaper in every way, and less wear and tear on the machinery, and also the value of the timber, and you have to consider the fire risk. I made a note of a number of

conditions. I may have omitted some. I suppose I am allowed to refer to that? (Witness referring to his notes.) It also depends on the amount of timber in the tract. If it is a very small tract of timber, there is always a good big sum which has to be spent to open up a tract of timber. If that tract is small it costs more per thousand to open the tract. If it is large it costs much less. If I was examining a tract of timber and if any one presents a tract of timber for me to purchase I always inquire whether or not there is timber around it. I do not care who owns it; if there is more timber in that zone it is more attractive to me than if there is no timber there. The size of the timber has a bearing; medium sized timber is always easier to handle than large sized. If it is very large, if the stand is very large and uneven,—if you cut one tree which scales 2000 feet, and another 20,000, it is very hard on the machinery; You have to have machinery that is heavy enough to handle the heaviest timber, and that is really an awkward thing to use when you come to handling small stuff. If you have an even stand of timber the right size and not too large you can handle that with a Ledgerwood engine, which is more economical than logging with a donkey engine. Another thing is a continuous operation. If timber is located in a place where you can only operate five or seven months out of the year the cost is greatly increased. This is on account of the fixed cost and depreciation which would be just as great whether you operated or not. Taking very old growth timber as compared with thrifty young timber and there is a great difference in the cost of falling. The old growth timber is more brittle and more liable to break than the smaller timber. Take a small healthy tree and when it falls it will bring up in the air, and you take the heavy old growth tree and fall it and it crushes right through and breaks the log, or splits it. Take it on rough ground and in falling it is very difficult to buck the timber up; that is, to saw it into logs after it is fallen. If the end happens to be on a high place and there is a depression between

that and the butt of the tree, when you come to saw that tree, you have to block it up, or else the two ends will pinch together, making it almost impossible to saw. This all takes time and you have to use wedges to pry the tree apart, and keep it from falling down, and pinching the saw. It is also the fact, which we know from experience, that young growth timber will hold out the estimate made by the cruiser much better than the old growth. We have had experience with both kinds, and we can get an accurate count there with the way our cruises compare with the sawyers. We find that when we are in the younger growth timber the estimates always run better than they do in the old growth. In fact old growth timber usually falls short. The reason for this is there is usually a great defect in the old growth timber and it is impossible for the cruiser to tell from the looks of the tree on the outside whether or not that is sound; and the chances are, when the tree is very old that there is a great deal of ground rot, and the top is usually rotten and passes to nothing when it is fallen. Very few cruisers take an account of this, and they do not have an opportunity to check upon their estimates. But we are in business and have cruisers' estimates and know the result and tell in that way. Our own cruisers we have instructed as to that. I think that is about all I can think of right now in regard to the basis I use in valuing timber."

Witness says that the timber in Zone No. 1, the Straits timber is good timber. It is principally old growth. There is some young growth there, but the bulk is old growth. It stands upon rough ground, all of it. There is some on smooth ground, but generally, as a whole, it is on rough ground. It must be logged by a logging railroad. The railroad construction and operation for logging this timber is moderately difficult. Very little of it will go directly into the Straits. It usually has to go around a draw. It has to go to a harbor first, and there are no harbors on the coast, except Port Angeles. The logging branches, or spurs, to the main railroad are difficult to put in on

account of the roughness of the ground. The logging conditions of the Lacey holdings in Zone No. 2, embracing the Sol Duc Valley and the Callawa river are extremely favorable. The ground is practically level and there is a great deal of gravel in the soil, and tracks can almost be put upon the ground without any work at all. On the Strait Zone, most of the soil is clay, and there is very little gravel to make a good road bed, especially a wet country, where they have so much rain. It is necessary to haul gravel and ballast a railroad carefully. Where the gravel is not in place, that is quite an added cost to the construction of a railroad.

The character and quantity of timber standing in Zone No. 2 is good. The poorest timber is along the wagon road. The timber in Zone 2 is medium growth timber; it is not old growth timber, and it is not small sapling growth. Compared with the Straits timber, the later has a great deal more defects on an average. There is one part of the timber down there on the Callawa River that is old, but is not defective, down in Zone 4. Witness does not know this from personal inspection, but from the county cruises; while the county cruises state that the Straits timber is old, deteriorating, and top broken.

Comparing the fire risk between the Straits Zone, Zone No. 2 and Zone No. 4, witness says": "The fire risk is not as good as it is on the timber to the west, that flat level country. According to witness' experience, timber in a flat country very seldom burns, but timber on a side hill, if a fire gets started, the fire follows up as through a chimney; thinks the fire risk in the interior is better than on the Straits; thinks the interior country is wetter than the Straits, more rain.

Q. What in your judgment would be the comparative cost of cutting these trees and sawing them into logs and rolling them onto cars, getting them into salt water, the comparative cost, I should have said, of the timber in this zone, or in zone 2 and 4, the interior timber belonging to the plaintiffs in this case,

and the timber in zone No. 1, or the Straits zone?

A. Can I take the pointer?

Q. Yes sir.

A. This zone, the timber through here and giving that portion there and part of this is good, too—coming down through here there is good ground, most of it, and down through here can be logged as cheap as any timber I know of in the State of Washington; I think, cheaper than any timber on the Pacific Coast, logged to cars; that is, putting on the cars ready to haul to market.

MR. PETERS: Let's get into the record the zones to which he refers.

MR. FROST: Then that would be all the timber of these plaintiffs in zone No. 2?

MR. PETERS: I did not understand him to so state.

A. Is this zone 2?

MR. FROST: Yes sir. You would include all the timber of the plaintiffs in zone 2 in that category?

A. There is a little rough ground in here on the outskirts. In any tract of timber there is a little rough ground; but the preponderance, I think, 90% of that belt is level ground. That is my own experience for my examination of the County records.

Q. And that is the timber in zone No. 2?

A. Yes sir.

Q. Take zone No. 4, you say, how much of that is comparatively level?

A. That is nice ground in there.

Q. That would be the intersection between five and six?

A. Yes sir.

Q. And any other in this portion of the zone?

A. Here there is nice ground. (Pointing). That is rather rough in there, parts of it. We own a little timber in there, ourselves. This tract in here would not log as cheaply as that.

MR. PETERS: You were last pointing at zone No. 4?

A. Parts of zone No. 4.

Q. (Mr. Frost) The north portion of zone No. 4, you say, is all level ground?

A. Yes sir, practically level ground. It gets worse over in here, I think, some place; but the bulk of that timber is the finest logging showing I know of.

Q. And as compared with the cost of placing the timber in the Straits zone?

A. This can be logged and put on cars for much less than any timber in the Straits.

THE COURT: The last answer, does that apply to both the Sol Duc and Callawa valleys, or just the Sol Duc?

A. Take an average of the whole thing, and this can be logged cheaper than the Straits zone on cars.

Q. (Mr. Frost) Now, including the cost of railroad operation, or hauling, or the difficulties with the Straits zone, what would you say would be the cost of getting it in the water?

"A. The cost of a railroad I figure, from the Pysht or Clallam—I want to say here that neither Clallam Bay or the Pysht are the right places to handle those logs. I suppose the County, in assessing timber, assumes that the logger will handle his timber the best methods known at the time, the best methods available, if he has the convenience to do it the best way; if he has not, that is not the county's fault, but the fault of the fellow who foolishly puts his money into timber. They always put more money into timber than they should; and when they come to operate they have not money enough to operate with. That is our experience with ourselves, and everybody else. I figure that if you want—this suit seems to assume from the testimony that is brought out, or they are trying to bring out, that the Pysht is the only place to take those logs. Now, assuming that is true, which is not true, I figure that a railroad can be built from the mouth of the Pysht down to the center of the Lacey tract for less than two hundred thousand dollars. They have in their tract, according to the County estimates, some three billion feet, and two hundred thousand

dollars at a cost per thousand would be about, a little over 5c a thousand, the cost of that railroad. Take the Pysht tract, which they have referred to, considerably, we have about seven hundred million there, and the cost of building the main line there to open up the Pysht tract would probably be about seventy-five thousand dollars, and that would be about the same cost per thousand, about 6 or 7c a thousand; practically no difference, considering the two tracts. It would cost no more to build a railroad to open up one than the other. Now, as to the hauling of timber, of course, it would cost a little more to haul from the interior than it would from the exterior. It is a little bit longer haul, at a grade of $1\frac{1}{4}$ per cent, I believe, that has been established by engineers, against a road of 3% grade, against empty, cars. We are logging in Chehalis County, the Polson Logging Company, in which we are interested, logging timber there at the present time, hauling it about 25 miles, which is practically the distance to the center of the Lacey tract, and it opens up in nice shape 25 miles of main line, and we have kept an accurate account of our cost of hauling and every department of the business, and I have referred to this and made some figures on it, and I will also say, we are logging another tract of timber in Snohomish County where the haul is about 7 miles, practically the same as we will have to haul here, and in that country the ground is very level, in fact it is a good deal like this ground here, only the timber is not so heavy per acre.

Q. What ground?

A. The timber in Snohomish county does not stand as heavy per acre, and the timber in Chehalis County does not stand as heavy per acre.

Q. When you say this ground here, you mean the ground belonging to the plaintiffs in this case, do you not?

A. Yes, sir. We find that the Polson Logging Company which hauls logs 25 miles at a cost of 42.3 a thousand to haul their logs and put them in the water; that also includes the cost of yarding the logs

to the main line, which should not really go in that, because that is a part of the operating expenses. That is not a part of the hauling expenses.

Q. When you say the cost of yarding that to the main line, you mean the cost of switching?

A. Yes sir, the cost of switching.

Q. By that, you mean taking the cars out from your logging spurs to the main line?

A. Yes, sir. We figure that should not be charged into the transportation, but we have always done that, so I can't segregate that part; but I know that the cost of switching is practically as great, if not more, than the cost of hauling. The Merrill-Ring people are hauling 7 miles, and it costs them 37c per thousand; the same kind of work. The difference of five cents a thousand over that for the short haul.

Q. Does that include your railroad operations?

A. Yes sir.

Q. And that includes the cost of oil and fuel?

A. The fuel and maintenance of the road. I did not include depreciation; but depreciation on the main line of this tract here, would be much less than the depreciation on our tract, on account of the greater amount of timber. Any depreciation considered would be in favor of the interior timber. I can tell the difference in the cost of logging on rough ground and on level ground, in my experience in logging in two localities, which had the same conditions, one being level and the other rough——

Q. Explain that to the court.

A. We find that falling in rough ground costs 21c per thousand more than it does on level. The yarding on rough ground and loading on rough ground, compared with the level, is a difference of 26c a thousand in the cost of that part of the logging. The branch construction I find in rough ground costs 44c, and level ground costs about 25c a thousand, a difference of 19c. This comparison is based on two tracts which run about an equal stand of timber per acre; that is, that there is fifty thousand per acre on

one tract, and fifty thousand on another, just about an equal stand.

Q. (The court) What were your figures on level ground for branch construction?

A. A difference of 9c; 44c one, and 25c the other. Take it where the timber stand is much heavier per acre, there is another added saving, which is very great. I should say it might make a difference of 50c a thousand.

Q. What is that?

A. The difference in the stand. If one tract has twice as much timber on an acre as the other, the tract can be logged for 50c a thousand cheaper than the other. Taking a rough tract and fifty thousand per acre, and a rough tract and one hundred thousand per acre, there would be a difference of 50c a thousand at least in the bigger tract.

Q. In favor of the heavy stand of logs?

A. Yes sir.

Comparing the run on timber in these various tracts, the timber of the plaintiffs in Zone No. 2 runs about 88000 per acre, I remember this is 88000 because it struck me as being a wonderful stand of timber. Zones No. 3 and 4, run from sixty-six thousand to eighty-eight thousand per acre. Our own timber runs about fifty thousand per acre and the county estimate is 52,000. The Puget Mill and Timber Company runs thirty-nine thousand. The Milwaukee Land Company is the best tract of timber along the coast. The Goodyear timber on the Straits runs about the same as the other timber.

Q. What in your judgment is the comparative value of a stand of timber per thousand feet in this zone No. 1, and in zones No. 2 and No. 4?

A. Well, I think that the timber in the interior is worth fully as much or more than the timber on the Straits. Take it as a whole, I know it is worth more; that is, take all the tracts along the Straits as one tract, and all the Lacey tract in the interior. The Lacey have practically all the fir timber in here, ex-

cept the State lands, and some which the Milwaukee have. It is a more valuable tract of timber.

With respect to hemlock, the hemlock on all of these tracts, Straits and the interior, is equally poor; where the hemlock grows with fir it does not amount to much. A solid stand of hemlock timber grows thrifty, and is worth considerable money.

Counsel for the defendant reads to the witness Merrill the charges from the plaintiffs bill of complaint of discrimination and conspiracy on the part of the county officials, Now that last clause would bring you and your Company within its discrimination, would it not?

A. In cahoots with the County officers, do you mean?

Q. Yes sir.

A. I don't think they mean that.

Q. Do you know, or did you ever hear, or ever receive any knowledge from any source whatsoever of any such a conspiracy or discrimination as that alleged in that bill?

A. Of course not.

Q. Do you believe in your own mind that such a conspiracy and discrimination exist?

A. I do not.

Witness says that his company has always paid its taxes on timber lands ever since 1880, and paid without a protest, except one year, when he thinks the company protested because it thought the valuations were high. Witness would not swear that his company did not protest as to the taxes for 1912, 1913 and 1914 that he knew nothing about it. Neither the witness, nor any member of his company, nor anybody associated with him directly or indirectly had ever with his knowledge been a party to any conspiracy or discrimination with the assessing officers of Clallam County in the matter of taxation.

CROSS EXAMINATION.

Witness is a member of the firm of Merrill & Ring, owns a large tract of timber on both sides of the Pysht River, they own both sides of the river at

its mouth. They began buying their timber lands in 1880. They were the first purchasers in that locality, and have the pick of the county; that conditions however at that time were not the same as now. At that time they were logging with oxen. Railroad logging was not known in any part of the country. Witness' firm had bought a few pieces of timber land in Clallam County recently.

“Q. Judging from the purchases that you made what would you consider the market value of the timber in the interior?”

A. I think it is worth just as much as that on the coast. There is no difference in the value. In fact, I think the Lacey tract, and that timber along the Lacey tract is worth more than ours.

Q. I am asking you about special purchases in the interior?

A. That particular bunch of timber that we bought was a poor quality of timber, something that had been left out and a part of it we bought because it was in a pass which goes from the Lacey holdings to Lake Crescent, and I have always considered that that was the way the Lacey timber would come out, by way of Lake Crescent.

Q. To Port Angeles?

A. Yes, sir, go to Port Angeles in preference to going to any other port along the coast.

Q. Have you been familiar with sales of timber land in the interior for the last ten years?

A. No; I have known of some sales, I have heard of sales, but I do not know that I can give any definite figures as to sales in the interior.

Q. Have you ever known of sales in the interior at a price greater than a dollar a thousand for fir?

A. No, sir. And I have no information of any exterior greater than a dollar a thousand.

Q. Answer the question. Repeat the question please.

Q. (Question read)

A. No, sir.”

Witness had bought lands recently in the Pass

between the Lacey Holdings and Lake Crescent, because he thought it was a good piece to own. He thought the railroad would go through there sometime and it would be valuable on that account.

“Q. Didn’t you buy that because of its strategic location, because it controlled the situation?

A. I bought it because I thought a railroad would go through. I do not think I can hold up any one. If they want to go through there, whether I would buy or not,—it is not strategic. It is on the Sol Duc River and not strategic at all. That one particular piece I thought was a good buy, and it lay right there and was handy to the lake. The other pieces are not extra good timber and they are not located particularly well. We bought them all cheap.

Q. What did you pay for this per thousand?

A. About a dollar a thousand.

Q. Did you pay as much as a dollar a thousand for them?

A. Yes sir, that is for the old growth fir.

Q. What did you pay for the fir as it ran?

A. Some of it was piling timber.

Q. Taking the fir on each purchase as an entirety, would it run more than 50c a thousand?

A. On our timber?

Q. No, on this purchase in the interior?

A. We do not class piling timber the same as we do old growth timber. I figured when I bought it I was paying a dollar a thousand for the old growth fir.

Q. What did you pay for the fir as a whole?

A. I did not figure it that way.

Q. What did you pay for the other fir?

A. I figured that per lineal foot.

Q. You did not figure that per thousand?

A. No sir; we did not figure that way. If we did we would not buy it.”

Witness had been over a considerable portion of plaintiffs land before plaintiffs bought them. Was over them about a month ago, just to go through on the road, was over them before in 1900; then went over two or three sections, and went down to Forks and

stayed around for two or three days, inspected particularly sections 31 and 32; spent, on the whole, a couple of days there, went down to Forks, chased around a little, and came home. That is the witness' entire experience with those lands, except that he has examined the county cruises; but would say that the most of the timber that he owns he has not inspected any more carefully than he inspected that timber. He examined the county cruises a few days ago, since they were brought up here to Seattle.

“Q. How long did you spend inspecting them?

A. I gave a more thorough inspection—I gave more time in examining those estimates than in examining estimates of timber I was buying.

Q. How long would you say you were spending examining it?

A. Eight or ten hours I should say.

Q. Eight or ten hours on the forty-one thousand acres?

A. Yes.

Q. During an inspection did you make a tabulation of the result insofar as the grades and quality, and the stand are concerned?

A. I did not; but other people have; they looked over it.

Q. And so far as your own personal inspection goes?

A. It is not my custom to do that.

Q. It is not your custom?

A. It is not the custom of any timber men that I know of.”

Witness is acquainted with some of the burns in Clallam County timber lands; supposes he knows the largest burns; asked if the large burns are not all on the south side of the ridge running between the Straits and the interior, witness says, there is a large burn on both sides.

“Q. There is a large burn on both sides?

A. There are large burns in the interior.

A. I do not know. It is on a steep side hill, and the Lacey timber is not on that steep side hill. I said

that the fire risk was lowest on level ground, than it was on rough ground.

Q. Do you know of any burn on the Straits side of the summit that is as large as those in the Sol Duc Valley?

A. There is not much land there. There could not be as large a burn. I do not know as there is as much timber to burn there.

Q. How much of an examination have you made of the plaintiffs timber in the Clallawa Valley?

A. I have made none.

Q. You know, do you not, that that country in there in the Callawa is very broken?

A. I know it is not as good ground as the other; but I know from the County cruises it is not all logging ground. I have examined the elevations carefully on the County cruise.

Q. In fixing your idea of the comparative value of that timber, would you consider, and did you consider, the route by which it would be brought out?

A. Yes sir.

Q. How would you think the timber in the Callawa Valley can be brought out?

A. Bring it up the Sol Duc River; I will show you—that is, I take the word of the cruiser. The cruiser said that on section 11, in here, that there was a good pass from this timber up to the Sol Duc River, and I looked at the elevations and I saw the elevations of the pass; I think it was 673 feet, or something like that. It was lower than 700 feet; and the elevation of the Callawa River was about 400, and the elevation of the Sol Duc is about 300, and there was no difficulty at all in going across there. The county cruise said that there was a good pass to the southeast corner of Section 11 on the Sol Duc River.

Q. While you are there, will you give to the court—you said that you did not consider the route over to the Pysht as the better route for the Clallam Lumber Company; will you indicate the route by which you think it ought to be brought out?

A. Yes sir; It could go to Port Angeles. The

proper way to handle that timber is to saw it on the ground and have a mill on Lake Pleasant. It would be a fine place to hold the logs around the mill, and a great place for a saw mill, and plenty of pile ground. I do not know of a more ideal place for a saw mill than right there, and my way of handling that would be to have a large mill there, or several mills. I think two small mills would be better than one large one, and railroad the lumber to Port Angeles, or to the East.

Q. Were your valuations based on that?

A. No, sir; my valuations were not based on that.

Q. On what were they based?

A. My valuations were based on taking it to the Pysht River, as I said first; you wanted me to.

Q. What sort of value would you put on it if it were manufactured at Lake Pleasant?

A. It would be more. You get it clear to the lake, and you figure that out yourself.

Q. Your calculation was based on a terminal rate, was it?

A. No sir, it was not. It was based on taking the timber through to the Clallam River, or the Pysht.

Q. If a terminal rate was not guaranteed in the interior it would make a difference in your valuation?

A. No sir, as I told, I did not consider that terminal affected my valuation. My valuation was based on taking your logs to the Pysht or the Clallam.

Q. Taking the two bodies of timber, if you will consider the two bodies of timber, of being the same value, one remote from transportation, and the other close to transportation wouldn't the value of the remote timber be as much less than the timber that is close by as much as the additional haul would cost to get the remote timber to market?

A. All conditions being the same, that would be true.

Q. As between the close-in timber, and the remote timber there would be a difference in value equal to the difference in the cost of transportation?

A. All conditions being the same, that is true.

In my calculation, in my testimony I think I stated what I thought that difference would be, between the Pysht tract and the interior timber, and the same applies to the Goodyear holdings and the Milwaukee piece, and the Michael Earles timber. I will say this, that the conditions on the Goodyear tract are not as good as ours. In fact the conditions on our timber are better than any of the others in the exterior.

Witness estimate of two hundred thousand dollars as the cost of the railroad for transporting logs from the interior lands did not include railway equipment, or the branch lines. Witness states that the \$200,000.00 estimate by him would build the railway line to the center of plaintiffs' holdings; that the proper center in his opinion would be at Lake Pleasant. Witness figures the railway required would be twenty-two or twenty-three miles, but says it would not make much difference if it be made thirty miles; it would only increase the cost per thousand about a cent a thousand, the difference is so small you could not figure it per thousand. It would not be considered at all in figuring the cost of operation.

Witness' estimate of value of timber was based upon an operating basis.

With regard to protest referred to on direct examination, witness states that he was not sure whether his company made a protest or not—he would not testify as to that. Mr. Beal, or someone, told him that his company had protested, but the witness was not sure whether they had or not. Upon being asked if he had not protested because he considered that he was over-assessed, he replied that he had protested because the interior timber was assessed for less than the exterior timber. "I don't know as I put it in writing or made a formal writing of it, but I was there when the Board convened. Mr. Peters was there, and Mr. Beal was there, and I know I protested, and I would do so always until the two are on an equal basis, or ours is assessed for less." In the protest that the witness made because the lands on the interior were

assessed at a figure less than the witness's timber lands, he was joined by Mr. Earles.'

Q. You do not know the nature of the protest?

A. No sir, I do not; I could not swear.

Q. Do you know whether you got any relief from the protest or not?

A. We did not get any relief that I know of. I do not know that we protested; I could not testify to that. I believe Mr. Beal, or someone told me that we had; I am not sure whether we did or not.

Witness' company has not yet put any logs into the Pysht River. They have cleared a little land toward its operation.

Witness knows of Michael Earles' mill at Port Angeles, and that he is operating his timber. Mr. Earles's timber is not worth as much as witness'. It is not worth as much as the timber in the interior. Witness thinks the Earles mill was finished in Port Angeles about a year ago. He was there last Spring, when it was nearly ready to operate. It must have been along in the spring when they were down there. At that time the mill was substantially completed. He things that Mr. Earles said he was going to start the mill the next day.

FURTHER CROSS EXAMINATION

Q. Calling your attention to Zone 4, you will notice in my reference to this that these zones have been remarked, some of them have, and I am following in my questions the red figures that are here—referring to zone 4, and taking up in the northwest Corner of that as it appears on this exhibit No. 18, and going across that line to the green lands that appear immediately on the other side of zone No. 2, what difference did you observe in the character and quality of the timber on those lands, or the facility of logging?

A. I know when you get back here a ways, it gets rougher after you get up in the forest reserve, the land becomes rougher there, but the heavy stand of timber is on good ground. That is the result of my examination.

Q. In both of those tracts?

A. I looked in Sections 5 and 6 in that township, and it looked awfully good to me. It wasn't as heavy timber, I don't think, as these two up here. Sections 31 and 32 are the best sections I know of in the Pacific Northwest. In fact, I don't know of any better tract of timber in the Pacific Northwest, than this particular tract there."

These are the sections that have been testified to by the other witnesses. They are across the line in zone No. 2, and are situated similarly substantially, with the lands 5 and 6, and 7 and 8, in the northwest corner of zone No. 2. The lands in the northwest corner of zone No. 4 are not as heavy timbered as the lands just across the line in Zone No. 2. It is all nice level land there. I think on the other side of this creek it begins to get more rough. There is a little creek there that divides the lay of the ground. I am not positive but I remember looking over those sections, and they looked very good from the amount of the cruise.

Q. And they are about the same so far as facility of logging is concerned?

A. No sir. I do not know any land anywhere that will log as good as these other.

Q. I am not referring to sections 31 and 32, but to 5, 6 and 7, over here, and these just across this line?

A. I could not recall now. To look over that amount of timber, if I was looking over the land to buy it I would not look over it as I did the County Cruises, and I probably could not remember every section.

Q. I think you said you referred to those sections to which I am now pointing in the upper North-east corner of Zone 4, that this lay very satisfactorily for logging?

A. Good ground there.

Q. The ground was good and level?

A. Yes.

Q. They are not high up?

A. Well, you go up on the side where there is a county road.

"A. I have looked over the county cruises, but

my recollection—I may be mistaken, but three or four days ago in looking over sixty thousand acres of land, it is pretty hard to keep every section in mind—my recollection is that there is good ground there for logging, quite good ground in there.

Q. Where are you pointing?

A. I do not know the exact sections, but I know that the County cruise shows two or three sections in there where it says "Good logging ground."

Q. That is in section 4?

A. I did not see the section. I saw the cruises and they show some land in there which is very good.

Q. What would you say as to the facilities of logging this in sections 3, 4 and 9 and 10 of Township 29?

A. My recollection is that is good ground; practically all this ground down here is, except where you go out on the edge away from the valley. All that valley timber land there is fine.

Q. And what would you say as to the practical logging situation of the Ruddock and McCarty lands down below?

A. That is a great logging show, fine logging show. The county cruise, I think, shows about eighty-eight thousand per acre.

Q. That would be, as I judge from your testimony, a much better logging situation than the lands of—

A. I say the average of eighty-eight thousand per acre makes it very advantageous.

Q. And that would apply generally to the Ruddock and McCarty lands?

A. Yes, sir, I think, according to the county estimates they average more per acre. The stand averages more per acre than the rest. I was surprised at that, because I knew that those sections 31 and 32 were so high. I thought that would run more per acre, but up here it gets rough and there is not as much timber. It is older growth and nicer quality, but does not stand so heavy.

Q. I understand, there would be very little dif-

ference in the cost of running that railroad to touch the Ruddock and McCarty lands, from taking it down to this Pleasant Lake?

A. A very little difference in that respect, that is, per thousand. Very little difference in the cost.

Q. You stated some time ago, that as a cutting proposition you would use Pleasant Lake for a mill?

A. I said that was the most advantageous way of handling that interior timber, that tract of timber. Pleasant Lake is right in the heart of the belt.

Q. In figuring upon the railroad that you contemplated here you were going to terminate it, as I recollect it, at this timber?

A. A cent a thousand would carry it down considerable distance.

Q. Into the Ruddock and McCarty lands?

A. Yes, sir, that is gravelly soil there, and you can build a road for almost nothing.

The log market was higher in the spring of 1912, than of 1914. During that period from 1912 to 1914, there has been no great demand for logs. A great many camps had to shut down. It has been a poor period for logging. Witness being asked what influence this log market had upon the price of stumpage during the same period says:

"A. The timber does not fluctuate as much as logs; it does not fluctuate with the price of logs from year to year. Of course, it has an influence. If a man has a tract of timber and wants to sell it, he can't sell it as well if the conditions are not favorable; but if logs go down a dollar a thousand, timber does not necessarily move down that much; but there would be an influence, of course.

Q. So that, after all, the experience in operating logs does not show the timber, or market or stumpage, does it?

A. No, sir.

Q. And the log market might be low, and the cost of operation high, and yet the value of stumpage would remain unchanged?

A. Yes, sir, I think that is true. Stumpage sort of goes along on a more even plane.

Q. And is not influenced really to any great extent by the rise and fall of the cost of operation of logs?

A. Not any, minor changes in the value."

There has been no call during the past period of from 1912 to 1914, for the opening up of any new areas of logging operations, but there has been a tendency to do so. This tendency is on the part of the man that has to get money out of his timber to pay bills. There is not any call for the operation because of any demand for the product.

Witness is sure that the Lacey people could have operated their timber during the period of 1912 and 1914 at a profit of a dollar a thousand for stumpage. Witness' business has been operated at a profit during that time, both at Grays' Harbor and at Everett. They have not operated yet on the Pysht River, but have operated at a place where it would cost more to log than it would cost there, or than it would cost to log the Lacey timber. The personal element enters into it, but you are assuming the existence of average ability.

Q. Do you consider that a railroad such as you have described could have been put into the timber of the Lacey people in the period from 1912 to 1914, and the price paid for it during that period, and money made on the operation of that timber?

A. I do, on the basis of \$2.00 a thousand.

Q. But not at the rate of a dollar a thousand?

A. I said, basing it at \$2.00 a thousand.

Q. But money could not be made on basing it at a dollar a thousand?

A. Yes sir, a good deal more made, if you base it at a dollar a thousand.

Q. Basing the stumpage?

A. That is what I mean. I say we could make money on that during that period at the rate of \$2.00 a thousand for stumpage.

Q. That would be taking it as if you had paid

\$2.00 a thousand to somebody else for the stumpage?

A. Yes sir; there would not be any great profit in it, but we would not lose any money.

This railroad that witness refers to was to go out up the Pysht River over the Pysht Pass, or the Beaver Pass.

“Q. I think you said that eventually that would go out through Port Angeles?

A. It could go there too.

Q. What was your idea of the operation of this property, which route did you have in mind?

A. Of course, I could not tell; I have been there; I have walked over it,—I can point out on the map at the Pysht—I was over the ground several years ago with an idea of seeing how the ground laid for a railroad, and at that time I thought that that was feasible, and since then the Milwaukee has built in there part way to show that it is feasible. And I have always banked there on a road from Angeles to the Pysht. That has looked feasible to me by way of Lake Crescent.

Q. You have figured out, however, the length of the road in either instance?

A. You can estimate that from the map quite readily.

Q. You can?

A. Approximately, within a few miles. There are large belts of timber there, and a few miles of extra road won't make much difference in the cost of a thousand feet.”

Witness figured that 40,000 acres of land with three billion feet of timber on it would economically justify the construction of such a logging railroad; and there is a great deal more timber available there around the outskirts of the tract. “There is a world of timber, in fact, a belt of timber from the east end of the Lacey holdings down to Grays Harbor. A continuous belt.” That if there were twice as much timber as three billion a logging railroad would cost only half as much per thousand feet; that if the size of the holdings was decreased there would come a

point where it would not be economically feasible to construct such a railroad; that if there were only a forty acre tract owned by one man the assessor would have to assess that at nothing because it would have no value unless somebody else would help get it out; that an isolated 40-acre tract situated in the same location as the Lacey timber, and having no other timber around it, and being forty miles from the market would not be worth anything; that the same would be true of a thousand acres; that if there were two or three thousand acres, containing the only timber in that belt, it would not be worth anything, but if there was timber around there owned by anyone else, or owned by the State, or any other company, it would be worth something. The valuation of timber land is based on a theory of business, which is the only way that you can base values. If a man had a thousand acres of timber and a railroad should be built in to take it out, it would be worth something commercially, but the witness would not buy a thousand acres of timber lands isolated, forty miles from transportation, nor would anyone else, although it might have a speculative value.

As to the value of hemlock, if you have to tow it to market, it is not worth much; but hemlock may be utilized if you have a railroad and saw it on the ground. Hemlock makes good lumber, but in a stand of fir is rather defective. It could be carried on a barge to some railroad terminal, but not economically. Where the fir is heavy and thick, the hemlock is very defective, and not a good tree. Where there is a solid stand of hemlock it grows into beautiful trees.

“Q. Mr. Merrill, suppose I ask you the comparative value of timber that ran say, in this wise: Graded No. 1, 42, merchantable 35, and No. 3 23%, and I asked you to compare that with fir that ran 35, 42, and 23, which would you say was the more valuable timber?

A. That which grades the highest, considering it from the operating standpoint. Considering it from the operative standpoint, that which grades the highest.

Q. That which I read you first, in other words?

A. Yes, sir.

Q. 42, 35, and 23.

A. There would not be a great deal of difference. I do not think. You can figure that out, the percentages, and prices of logs.

Q. What is that?

A. To get at that definitely you would have to figure out the value of the different grades of logs.

Q. Those percentages would indicate that the character of the timber in one instance was very much better than the character of the timber in the other?

A. I don't say very much; it would be better. I could figure out the actual difference in the cost, or value, if you want me to.

Q. I am asking you generally which would be better?

A. The higher the grade the more logs are worth, not the more valuable the stumpage is, that does not follow the tree as stumpage.

Q. I understand that.

A. But the logs would be worth more.

Q. So if the assessor's books showed the Merrill & Ring timber around 42, 35 and 23, and the Clallam Lumber Company Timber in the largest zone there, which is called No. 2 here, ran 35, 42 and 23, you would say that the Merrill & Ring Timber, according to the showing of the assessor's books, was the better?

A. Well, I would say that the logs from that tract would bring more money in the market.

Q. That is what I mean.

A. Yes sir."

RE DIRECT EXAMINATION (By Defendants)

Witness states that in the estimate that he has made of the cost of railroad construction, he had charged the whole cost up to the timber, and allowed nothing for salvage for the railroad. He says that the steel would be worth considerable; that if he were putting in a road he would buy relays instead of new steel; that he would figure the cost of his road on

new steel, which is considerably more than the steel he would actually use.

Witness says that if the hemlock on the interior land was milled at Pleasant Lake, it would have a value. Milling the timber on the ground is the most economical method of handling both the timber of the plaintiff and the witness' own timber. With reference to the hemlock, the witness states, "Our hemlock is as good as the Lacey hemlock, I did not look at the percentages of hemlock between ours and theirs."

Witness is asked by the defendant, "Q. Has there been any substantial change in the value of standing timber per thousand feet in tracts sufficiently large to constitute a desirable operation since the first of March, 1912? He says, "There hadn't been much demand for those tracts, but that when you try to buy one, a good tract, that the owner charges pretty nearly as much for it as they did at any time"; and offers to give some illustrations.

"Q. (Mr. Peters) Those are illustrations of what people hold their timber at, but not what they sold it at?

A. What we are willing to pay for it and what they ask for it; what we have offered and what they have refused.

MR. PETERS: That would not be competent.

THE COURT: It would be some indication. It would be somewhere between those two points.

WITNESS: The difference is not very great.

THE COURT: It would be pointing in the right direction; The objection is overruled.

MR. PETERS: Note an exception.

THE COURT: Exception allowed.

A. Well, we have made offers on a tract of timber in Chehalis County which is situated 25 miles or more from the market, tide water, and the route to get there is more difficult than the route to get to the timber in the interior of Clallam County; that is, more difficult and longer, or fully as long, as it would be to get from Clallam or the Pysht to the interior timber,

and we have offered two and a half a thousand for it, and that offer was refused.

THE COURT: This is since 1914?

WITNESS: Yes.

THE COURT: I do not think it would be much good to the court.

MR. EWING: What time was that?

A. It was this year. But I will say that I do not think as much of the timber to-day as I did a year ago, before the war. I would be more anxious to buy at that time than I would at the present time.

Q. Did you make a similar offer for any timber previous to that time?

A. We have been negotiating for that timber for the last seven or eight years. I have never been able to buy it. It is a nice tract of timber on rough ground. I think there is about eleven thousand acres of timber and there is about seven hundred million feet of timber on it. It is practically the same, there is just about as much timber on that tract as there is on the Ruddock and McCarty tract, and it is a much more difficult tract to log, and it would cost just as much to get it to the market as it would cost to get the Ruddock and McCarty timber to the mouth of the Pysht River. Also I would say that the grade of our road the road which we would have to build there, would be much in excess of the grade to the Sol Duc Valley. The grade on the Polson road between the Humptulips and the Hoquim is $1\frac{1}{2}\%$, and there is also a reverse curve in that grade which makes it equivalent to about 2% grade. Then, to get over, we have to cross from the Hoquim waters to the Wishkah and the grade there is over 3% adverse. It is down and up, 3% both ways. I noticed the other day that the testimony was excluded for the reason that as to a purchase of a small piece of timber you did not allow testimony because you said that might be an isolated case, and therefore would not show the value because it might be some peculiar condition which would influence it. I know of that case which was referred to, and I know of a great many others in the same locality. If

the court would allow, I would be glad to bring those in.

THE COURT: Unless the conditions are shown to be similar it would not be competent.

WITNESS: There would be no objection?

MR. RIDDELL: There is none right here.

MR. PETERS: The court said, if the conditions are the same.

A. And the conditions are the same, that particular piece of timber, the tract which Mr. Polson referred to, and we bought that of Mr. France and paid him over three dollars a thousand for it. I will say that we have bought in that vicinity, further from the market than that, at least a billion feet of timber, and we have not bought any of it in the last three or four years for less than two dollars a thousand. Mr. Polson is now, or went yesterday, to Portland to buy a single claim—

MR. PETERS: This is wholly incompetent, and we would have no opportunity to measure that Chehalis property.

THE COURT: The objection is sustained.

MR. FROST: Note an exception.

THE COURT: Exception allowed.

A. I could say— mention a particular instance of different tracts that we bought and paid over two dollars a thousand for it.

MR. PETERS: Tracts that you did buy?

A. We bought and paid for.

Q. Within what period?

A. Within the period since 1912.

MR. EWING: That is competent.

MR. PETERS: I do not think that would be competent on direct examination. It would be for us on cross examination.

THE COURT: If it is equal distance from mills, or the market, or harbor as this timber is shown to be, if there is any similarity in the conditions I would admit the evidence. But these single tracts, where there is a railroad built in, I do not know what advantages occur from getting the land.

WITNESS: This is a large tract that I was

going to refer to, of five hundred million feet.

THE COURT: You may answer.

A. We bought a tract of E. K. Wood Lumber Company on which there was five hundred million feet of timber, and we paid in excess of two dollars a thousand for that.

Q. How is that timber situated?

A. That is in Township 21, Range 9.

Q. In what county?

A. Chehalis County, in the same belt the Olympic Peninsula belt of timber.

Q. What distance is that from the market or salt water.

A. It is 25 miles or more, Some of it is more than 25 miles.

Q. How would that be logged?

A. It would be logged by railroad after you built it. There wasn't any railroad in there when we bought it. We are building now to it.

Q. (Mr. Peters) How long ago did you buy it?

A. A couple of years ago.

Q. How many years?

A. I should say about 1912. I looked that up absolutely, at least three years ago.

Q. You think it was that date?

A. Oh, yes; fully that long ago. I think I had a map of it. It is in the north end of Township 21, Range 9, and it can be delivered in water in the middle of Township 17, North, and the road will be over 25 miles long. We have that much road built already and we have to build more road to get to it. There is also a tract of timber in the same locality in that township east that was appraised for a bond issue by a competent cruiser on the basis of over two dollars a thousand.

MR. PETERS: That would not be competent.

THE COURT: The objection is sustained.

MR. FROST: Note an exception.

THE COURT: Exception allowed.

Q. (Mr. Frost) Mr. Merrill, when did you first

make the offer of \$2.50 a thousand for the timber concernig which you have testified?

A. Well, the first time we offered them anything for that we made an offer on the basis of logging; we were offering to put the logs in.

MR. PETERS: What is the timber you are talking about?

A. The tract which Mr. France owns. We offered \$2.50 a thousand this spring.

Q. That was not an offer to buy the timber out in cash, was it?

A. They offered it to us on terms.

MR. FROST: What I am trying to do is to bring out the transaction.

MR. PETERS: It was a logging proposition.

A. It was a purchase of the timber which we would own, not log for ten years. No telling when we would log it. A purchase of timber to hold for future operations. You said I could not say about the appraiser?

THE COURT: Yes; I sustained the objection to the appraisal, that bond issue. We have had appraisals for bond issue before in this case, and I sustained the objection.

WITNESS: Would an appraisal for any other purpose establish the value?

THE COURT: The objection is sustained. Sales made are admitted, but anything else is not.

THE WITNESS: I would like to bring out another fact.

THE COURT: You cannot cross examine the man that made the appraisal, like you can cross examine a witness who has testified.

WITNESS: We have a tract of timber which was appraised at a certain value, which I do not think the plaintiffs would dispute the valuation of, or the competency of the man who appraised it.

MR. PETERS: I am sorry to interrupt the witness, but I see that he can't limit the testimony to what we consider to be the grounds of competency,

without asking the witness to answer the questions that are asked.

THE COURT: Just wait until the questions are asked, Mr. Merrill.

Q. (Mr. Ewing) Referring to the timber that you had made an offer of \$2.50 a thousand on, which you said you had been negotiating for, for seven or eight years. How long a period of time have you made that offer of \$2.50 a thousand.

A. We did not make that offer until this year; but we have negotiated, and we made offers on the basis of logging the tract before this time; but an offer for the purchase of it was made this spring.

Q. Did you make any offers of purchase during this seven or eight years?

A. We tried to get a price.

Q. What prices did you offer yourself?

A. We do not offer usually until we get the prices.

Q. And no price was made to you?

A. No, we could not get a price on it.

THE COURT: Are you through with the witness?

WITNESS: They asked me some questions, some points that brought out in their questioning me that I would like to explain my answers in regard to.

THE COURT: If you have any explanation to make of any answer you made, do so.

WITNESS: The question was asked me if we owned the land on both sides of the Pysht River, at the mouth, and I said that we did; and I suppose the idea was to convey the impression that it would be impossible for the plaintiffs to get their logs to market on that account. I will say that there is a place at the mouth of the Pysht River which we are willing to let the plaintiffs use and we will also give them a right of way for a private road of their own if they want it. In that connection, I might say that it is evident that they are trying to bring out that the Pysht River is the best place—

MR. PETERS: I prefer to have counsel ask the questions.

WITNESS: We have been trying to improve the mouth of the Pysht River, and we have had an expert down there for some time to see whether that is feasible, and now are having a survey made, and those experts advise us—

MR. PETERS: We object to what the expert advises unless he is here to be cross examined.

THE COURT: That is hearsay. You can't tell what he advised.

WITNESS: He has done it.

THE COURT: The objection is sustained to your telling what his advice was.

Q. (Mr. Ewing) Mr. Merrill, is your ownership at the mouth of the Pysht River an obstacle to the use of it by these plaintiffs for logging their timber?

MR. PETERS: I object to that. That is the matter for the court to determine.

THE COURT: It is a legal obstacle for the owner to put in the way of anybody that wants to cross the land. The Court will judge about that. The witness has already told about their willingness.

WITNESS: Can I tell what we have estimated the cost of improving the mouth of the Pysht River will be?

THE COURT: Your own estimate.

WITNESS: Yes, sir; we figured two hundred thousand dollars. And, of course, Clallam Bay is available, so that at the present time the Goodyear people are logging there, and they are now building a banking ground on a piece of ground which we own and which we told them they could use at a nominal rental.

And also the question was asked me if we did not at the time we started purchasing timber on the Pysht have the selection of all the timber in Clallam County, and I answered "Yes, sir". I want to explain that at that time when we commenced buying there we did not know of the existence of this tract of timber in the interior, and we did not know about it for some time, and at that time also the people did not log back

more than two or three miles from tidewater, because the only means of logging was with oxen, and it was impractical to go more than a mile or so from tidewater to get logs. Railroad logging was not known. In about 1892 we sent some men over there into the Sol Duc Valley and they found this body of timber and tried to locate it. We put lots of men in there to take up claims, and we were unsuccessful because the Government turned us out. About that same time when we were putting men in there we had—

THE COURT: The Statute of Limitation have run against that, I suppose.

MR. PETERS: It has as to the quality of what we may do under the law, but not as to the credibility of the testimony;

WITNESS: I did not understand the law, Mr. Peters. I supposed that was permissible.

MR. PETERS: No; timbermen have not generally understood it.

Q. (Mr. Frost) What is your age?

A. Forty-six years.

Q. How long have you been engaged in the logging and lumber business?

A. I have been in the lumber business since 1893.

Q. How long in the state of Washington?

A. I have been here since 1898.

Q. Constantly in that business?

A. I want to say another thing, that it would look to one looking at that map as if the Pysht tract, you could go there any place and put logs into Puget Sound along the shore. I want to explain that that is not practicable, and that in logging that we will log all our timber to one point.

THE COURT: You explained that yesterday.

WITNESS: Did I?

THE COURT: You said it would have to go to one central point to be landed.

WITNESS: Yes, it would have to go to one central. I also made the statement that they asked the value of the two tracts of timber, the tract on the Straits and the tract on the interior and I said I thought

they were of equal value. According to my figures there might seem to be a discrepancy, because,—according to what I said that timber in the interior would be logged very much cheaper than that on the exterior, much more than would be necessary to off-set the difference in the cost of hauling across that divide, and the difference in the quality of the timber. The reason I did that was I wanted to be on the safe side. I looked over those estimates as carefully as possible and I treated it just as if I would have treated it if I was going to buy a tract of timber. I figured on the safe side, and I left a margin in favor of the other side in my statement.”

RE-CROSS EXAMINATION

Witness says that he expects that it will cost his company some two hundred thousand dollars to prepare the mouth of the Physt River for logging purposes; that while this will not be a very good logging ground, it will be sufficient for operating their tract of timber at the rate of about one hundred million feet a year. This capacity could be increased, if necessary. While witness thinks that it would be the most economical method of operating the lumber to build a mill at the mouth of the Pysht, they do not contemplate doing so, because their finances are limited. But they do contemplate building a small mill to manufacture the hemlock.

The witness concludes: “In this testimony which I have made, I figure that we have sort of worked against ourselves, in a way, because we have always had an eye on the timber on the interior.

(Witness excused.)

S. A. WALKER, a witness, sworn on behalf of the defendants testified as follows:

DIRECT EXAMINATION

He is a civil engineer of fourteen years experience; has had experience surveying, laying out, and constructing logging roads,—four years experience at this. During this fourteen years he has been employed by the Northern Pacific Railroad Company, The Mil-

waukee Railway, The Copper River and Northwestern, and the Spokane & International; has been employed by the Merrill & Ring Lumber Company.

Witness made an examination for a route of a railway from the lands of the plaintiff in the interior to the Pysht River across Beaver Pass; thinks that a grade of two per cent from the summit to the Pysht River, in a distance of eleven miles can be obtained; found no unusual condition, or obstructions that would make the railroad costly; made no detailed estimate of the cost of constructing such a railroad, but in his opinion, the cost would be five thousand dollars for the sub-grade, and six thousand dollars above it as the higher cost, or eleven thousand dollars a mile, using sixty pound steel. From the summit down the the Sol Duc River witness believes he could get a grade of one per cent from the summit to Sapho. Sapho is a post office near the Sol Duc in the heart of the interior lands. He estimates the cost of such a road from the Pysht or Clallam Bay to the Sol Duc and the heart of the territory marked in bright red on the map (Defendants' Exhibit 18) as follows: the eleven miles from the Pysht river to the summit, and seven miles to the cross road, or eighteen miles, at eleven thousand dollars a mile, or \$191,000.00. The maximum curvature on the road would be fifteen degrees, making the road curvature and grade easily and inexpensively operated. Regarding the course and termini of the road, the cost of which he had testified to, the witness said, "The summit here is in the center of the southwest quarter of Section 35, and I have followed right down the County road, the side hill near the County road to the quarter corner between sections 26 and 27." The terminus on the north was Pysht and on the south was the summit of Section 35, the divide between the Pysht and the Sol Duc; to make the 18 miles he had figured upon the road would have to go on down to the cross roads, a little below Sapho, east of Lake Pleasant. The road referred to would hardly be as good a road as a common carrier would use, but would be a good logging road.

Witness was in this country six months one summer, and four months the second. The investigation was made for the Merrill & Ring Lumber Company. (Witness excused.)

N. I. PETERSON, a witness sworn for the defendant, testified as follows:

DIRECT EXAMINATION

He is engaged in the logging business, and has been for twenty years; is now in Dungeness, the east end of Clallam County; has been in active supervision of logging operations during that time in the State of Washington; has bought timber lands in the state, but has not sold any; says that he is familiar with the market price of logs, and the market price of timber and timber lands; has driven through the timber lands of plaintiff, has looked over the county cruises of those lands to some extent; His logging operations have been in the extreme east end of Clallam County. The timber there is fir, cedar and hemlock. The quality is rather a poor grade. The timber runs between about five and ten per cent No. 1 logs, forty per cent No. 2, and the balance No. 3.. From what he has seen of the plaintiffs timber in the interior, in zone No. 2, witness' timber does not compare at all with it. His is poor. Theirs is good. Thinks the timber in the west end is worth double that it is in the east end. Thinks the market value of plaintiffs timber in zones No. 2 and 4, March 1st, 1912, was about Two dollars a thousand, fir, cedar and spruce. In the east end of Clallam he has bought some timber for a dollar a thousand, and bought some for two dollars. The value of the timber in these respective zones in 1914, would be the same as 1912.

"Q. Are you at all familiar with the timber in what is known as zone No. 1, or the Straits Zone, being the holdings of the Puget Sound Mill & Timber Company, otherwise known as the Earles Timber, and the Milwaukee Land Company Timber and Merrill & Rings, and the Goodyear Timber Company?

A. I have seen a very small portion of the Good-

year timber, but I have never seen the Merrill & Rings, that I know of, nor the Michael Earles timber.

Q. Have you made an examination of the county cruise of this timber?

A. I looked over it, to skip through it.

Q. Please state what, in your opinion, is the market value of this timber on the first of March, 1912?

A. I should say \$2.00.

Q. About \$2.00?

A. Yes, sir.

Q. And on the first of March, 1914?

A. The same."

CROSS EXAMINATION

Witness has lived at Dungeness for six years; has been operating there for that time; logged about six or seven thousand acres. They logged into Dungeness Bay, a little lagoon. They are not right on the tide water, but have logged as high as ten miles back. There is a railroad there. They bought out the entire outfit; also the equipment. During that period the price of logs, with the exception of a couple of months, has been, six, eight and eleven dollars per thousand. The market has remained the same from March, 1912, down to March, 1914. It has not bettered any. His trip through the plaintiffs lands was made on the fifth of July last. He went through with his family and another family in automobiles. His attention was not directed to the Lacey timber at that time. He did not go through with a view of investigating; merely went through on a pleasure trip; never been through it any other time. Witness looked at the county cruises in much the same way that the other witnesses of the defendants examined them, Mr. Newbury, and Mr. Chisholm; no more in detail than theirs. He looked at them for the purpose of being a witness in this case. The assessor just opened the books and said, "Here is some timber." Witness did not look over the Lacey timber any more than other timber; took no tabulated statement of it.

Q. You took it page by page and looked over what was said about the sections on that particular

page. You made no notes of it with a pencil or paper, and turned over and looked at the next, and so forth, and that is the examination that you made, and all the examination?

A. Yes sir.

Q. Did you make an examination of that same character with respect to the Straits Timber?

A. Yes, sir, as far as I went.

Q. On the same occasion?

A. Yes, sir.

Q. About how long do you think you were, making that examination over the books?

A. Not very long.

Q. About how long?

A. Maybe an hour or two.

Q. Not over two hours?

A. No sir, I don't think so.

Q. And you examined then the 41,000 acres, of one class of the Lacey timber and 8,000 of the Ruddock and McCarty timber, and some 25,000 acres of the Pysht timber, and 21,000 acres of the Goodyear timber in the course of two hours?

A. I do not think I examined the whole bunch of it. I did not go through the whole book.

Q. You did not make any such examination that you would care to go there and buy that timber on, on the examination you made, did you?

A. Well, no. I do not know as I would."

Witness does not base his valuation on timber in the west end upon any sales, but on the body and volume of timber that is in there. Witness does not know of any sales having occurred within the last five years in any of the lands marked in green on Defendants' Exhibit 18, or those marked in yellow, meaning the Lacey lands. He does not know of a single sale having occurred there. He does not know the price of any timber land sold in the west end of the county. Thinks the hemlock in the west end of the county is worth from twenty-five to thirty cents a thousand. made no examination from the cruise, or personal inspection of the amount of hemlock. In the witness'

operations in the east end they have some high ground to traverse on their railway; not very steep hills. They have ten or eleven per cent grades on it where they go into their timber on spur lines. They have five % grades on their mainline both going in and coming out. It is a good country for logging.

On re-direct examination the witness says the ground of the plaintiffs timber on the Calawa and Sol Duc Rivers, such as he saw, was good ground. He saw some hilly land, but did not see any timber on it. He thinks the plaintiffs lands are more favorable for logging operations than his. Where witness is they have about fifteen or sixteen thousand feet of logs to the acre, and over on the plaintiffs there is a great deal more, four to five times that in some places.

RE-CROSS EXAMINATION.

Witness had taken no observation while going through the timber with a view of telling whether the lands were good logging, or not.

“Q. When did you think of it again?

A. When I thought of it again?

Q. When did you have it called to your attention again? You said you were not down there to make any investigations?

A. No.

Q. You did not know there was any lawsuit involving all these lands, did you?

A. I had been in the business a good many years, and whenever I go into timber I most generally pay some attention to it, always do.

Q. All that you saw was simply what you could see from the automobile road?

A. Not altogether, no.

Q. Did you stop and go into the timber at all?

A. Yes sir, I did go into it a little.

Q. When?

A. Right there on that trip.

Q. Where did you go?

A. I did not go into only just into the timber off the county road, just a short distance.

Q. Whose timber did you go on?

A. I could not tell you.

Q. You do not know what timber it was, do you?

A. No, sir.

Q. How many trips of that kind did you make going into the timber at that time?

A. Wherever we camped, sometimes we would look around a little.

Q. Could you tell from the map where you did camp?

A. No sir, I could not.

(Witness excused.)”

R. W. REMP, recalled as a witness for the defendant, testified as follows:

DIRECT EXAMINATION.

Witness made a survey for the location of a logging railroad from the Summit down to the mouth of the Pysht River, and found it possible to construct the road there on a working grade of 4% in favor of the load down to the Pysht river, on an 8.2 mile line. By lengthening out that line 2 miles, the grade could be reduced to less than 3%. From the summit down to the Sol Duc, witness thinks he could run on a four per cent grade straight down the valley. At the Summit in the Southeast quarter of the southeast quarter of Section 35, Township 31, Range 12, the elevation is 797.5 feet. The elevation of the crossroads at Sapho is 452 feet, a difference of 327 feet, which gives less than 1% grade. The survey was terminated at the cross roads where the Sol Duc road meets the road to Clallam. This terminus would be about the favorable place to reach the plaintiffs lands with spurs from the main line.

Witness, on cross examination as to his competency to testify about the cost of construction of railroads says; That he has built railroads. He superintended the construction of the R. R. & N. Railroad from Tillamook to Buxton, about one hundred miles long, a logging road. That was from 1908 to 1910. He was assistant to Mr. Cook, assistant chief engineer of the Northern Pacific Railroad for four years,

had charge of construction work under him for about two years and a half. He moved the bridges at Gray's Harbor, and made the line changes that were made down there; considered the heaviest piece of construction on Grays Harbor; that being a branch of the Northern Pacific; moved the bridges under traffic, and put in the steel that is there now.

In making his estimate of the cost of constructing the logging railroad regarding which he testified, the witness stated that he took the cost mile by mile from the mouth of the Pysht River, and included in his estimate culverts, road boxing, curbing, clearing and burning. He provided for clearing 40 feet, an average break 20 feet wide throughout, in many places it would not be so wide as that, that is about the ordinary method of railroad construction—the roadway 20 feet wide. He had the whole estimate totalled and averaged, and had embodied it in his written report in his own hand writing. The total estimate up to sub-grades for 8.2 miles for 60 pound steel was \$47,518.58, an average of \$4715.58 up to sub-grade. With 65 pound steel he figured \$5816.00 per mile, or a total of \$95,209.78. That was from the top of the hill down to the mouth of the Pysht River. Witness then corrects himself and states that his first figures were for cost to sub-grade, on 56 pound steel, the average cost being \$10,351.17, and for 65 pound steel the average cost would be \$11,610.94; that would construct a road as well constructed as the average main line of a common carrier railroad. He figured that the same average would cover the cost from the summit down to the Sol Duc, but states that that would be a-way up high. The distance of the whole line from the mouth of the Pysht to the Sol Duc, or the Forks would be 14.83 miles by the witness' survey, and his estimate of the total cost of a completed railroad, ready for operation, to the Forks road on the Sol Duc from the mouth of the Pysht, for 65 pound steel, would be \$173,000.00. This would provide for a maximum curvature of 15 degrees, which could be reduced by working it out a little. On cross examination he stated

that the distance from Sapho to the middle of the McCarty lands is about six and one-half or seven miles, measuring from the cross roads at Sapho.

CROSS EXAMINATION

Defendants then introduced in evidence as exhibit 28, the field map used by defendants witness' when down upon the tracts. This map shows the zones for the year 1914, and the assessments for that year. The black lines on Exhibit 28 show the county road running down to the plaintiffs' tracts, showing the road the plaintiffs' witnesses took on the automobile trip.

(Witness excused.)

J. E. FROST, one of the counsel for the defendants, testified as follows under oath:

DIRECT EXAMINATION.

He resides at Seattle, or at his logging camp, about forty-seven miles east of Seattle. Three or four years ago he retired from the practice of the law, in which he had been engaged for more than twenty years, and became engaged in the logging business. Witness was a member of the State Board of Land Commissioners from 1907 to 1912, during which time they had cruised and appraised, and sold many tracts of timber land throughout the state of Washington, and witness participated in such appraisal. Until July 1st, 1912, he was a member of the State Capitol Commission. As such, they had cruised and appraised approximately one hundred thousand acres of timber land in western Washington, of which about twenty-seven thousand were situated in the west end of Clallam and Jefferson counties.

From 1905 until July 1st, 1912, he was a member of, and a greater portion of the time, president of the State Board of Tax Commissioners.

"A. If I may tell the whole story. In the early history of that commission it started on a thorough line of investigation as to the manner and method of assessment of various classes of property throughout the State of Washington with reference to its char-

acter, and value, and fairness of assessment. We made a very exhaustive investigation of the manner and method of assessing timber lands throughout the various Counties in the State, and followed that up with a very earnest campaign for a cruise in the State of Washington for timber. I think that resulted in cruises by the various Counties in Western Washington of the timber lands within their borders. I may say also, that it is the duty of the State Board of Tax Commissioners to assess these public service properties in the State. The Board of Tax Commissioners also comprise the majority of the State Board of Equalization, and the law provided for the assessment, of the Public Service properties of the State, and by that I mean the railroads, and telephone and telegraph lines, and other kindred public service concerns. The law provides that they shall be equalized in the various counties at the same proportion of their actual value as the general mass of property within that County may be equalized and assessed. And, in order, for instance, to arrive at the proper ratio of the equalized, to the actual value of the railroad, it becomes necessary for the State Board to ascertain what the ratio of assessed to the actual value is, of the properties within the Counties in which that railroad, or public service property is situated, and in order to do that, and under the law it granted the State Board of Tax Commissioners the power to subpoena and compel the attendance of witnesses. A great many witnesses were examined throughout the State of Washington, as to the actual, or to the market value of property, and I myself conducted those hearings, in which I examined, under oath, many men who were qualified under oath to testify to the value of timber lands. I held those hearings, personally, in Clallam County.

MR. PETERS: I do not see what competency this would have upon this question, unless it is going to be that the witness will follow it up with the statement that he made some examinations there of witnesses, and reported what he found. If we had had an opportunity to examine those witnesses, it might

have been competent, as to what was found, but it is not anything possibly which would bind us. It ought not to be allowed, because we had no hearing there.

THE COURT: I think it is leading up to something. If it is immaterial, you may move to strike it out afterwards.

Q. (Mr. Ewing) Mr. Frost, will you state the nature of your practical operations as a logger?

A. I have been engaged in the logging business for about three years, and have, during the last two years of that time, been in active supervision; that is, on the ground, and in the field. During the first year of our logging operations, we had a logging superintendent, and I acted as manager of the Company with offices in Seattle. Two years ago I abandoned the Seattle office and discharged the superintendent, and moved my bookkeepers and stenographers and office outfit into the woods, and since that time I have had actual superintendence of all the practical logging operations, including the marketing and selling of the logs.

Q. You refer to "we" and "our"; what company do you refer to?

A. I am secretary and manager of the Cedar Lake Logging Company, and the operation.

Q. Where is the seat of that company?

A. We are operating partially in the Cedar Lake water shed, and partially in the Snoqualmie water shed.

Q. That is in—

A. In King County, State of Washington.

Q. What actual, practical experience in the construction and operation of logging railroads have you had?

A. We are constantly building logging railroads. We have a force of men constantly engaged in building logging railroads and spurs, under my own supervision, and I might say that I started out in the logging and lumber business in Pennsylvania a great many years ago, and in the employ of the Frost Lumber Company in Pennsylvania, and I there supervised and superintended the construction of logging roads that

were put in and other railroads leading it down through the Allegheny Mountains to the operations of this Company. If I may add to my qualifications, that I, in my boyhood days, was in the employ of the Pennsylvania Railroad for approximately two years, as a civil engineer, and in charge of railroad grading, and in charge of the track laying upon the Ridgway & Coalville Railroad, and that I also worked as a civil engineer upon the construction of the Buffalo? Rochester & Pittsburg in Pennsylvania.

Q. With what kind of timber, and their valuation, have you become familiar during your experience in the State of Washington?

A. Well, all of the commercial timbers of western Washington.

Q. Could you name the commercial timbers of Western Washington?

A. They are principally in the order of fir, cedar, spruce, and hemlock.

Q. What are the facts with reference to your having kept in touch with the lumber markets of Western Washington during the time covered by your operations with the Cedar Lake Logging Company, to which you have referred, with reference to the prices which have obtained for those various kinds of lumber that you have mentioned?

A. We are quite extensively engaged in logging, logging from five to seven million feet a month, and I have marketed all of our output at all times.

Q. And you know generally what the prices have been during the last two or three years say, or two years and a half?

A. I do.

Q. You heard the testimony of Mr. Polson with reference to hemlock in the lands of these plaintiffs in this suit. He put the valuation of a dollar a thousand upon hemlock; are you familiar with the commercial uses of hemlock?

THE COURT: Did he put the valuation of a dollar a thousand?

MR. PETERS: It must have been when I was out of the room.

WITNESS: My recollection of Mr. Polson's testimony is that he said that a large portion of the hemlock could be used in logging operations, and such as could be salvaged would be worth a dollar a thousand stumpage.

THE COURT: I did not remember it.

MR. EWING: If that is incorrect it may be stricken. What I want to get at is the commercial uses of hemlock lumber, will you explain that to the court?

A. Well, yes. Clear hemlock is largely used in siding and finished lumber; that has a market in the extreme east where they are familiar with hemlock. The ordinary grades of hemlock are largely used by box manufacturing concerns in the manufacture of boxes.

Q. What kind of boxes?

A. All kinds of boxes, but it is principally valuable, the hemlock of Western Washington is odorless, and it is largely used in the manufacture of boxes that might contain butter, or other things that absorb odors, or flavors, and it is in great demand for that purpose.

Q. State whether or not there is an actual market for hemlock lumber?

A. There is a very good market for hemlock. If I may go on, the market price of hemlock logs increased in the past three years.

Q. Between what sort of a range of figures?

A. When I first began logging operations about three years ago, our hemlock was sold at a No. 2 fir price, or slightly under that.

Q. What would that be in dollars and cents.

A. Hemlock was selling from five to five and a half. During all our operations last year I sold hemlock for \$6.75 a thousand, or approximately a dollar and a quarter advance in the market price on hemlock logs. I am now receiving for hemlock logs \$6.50; so that there is an actual value to hemlock logs.

Q. And in your operations you market them as a separate part of your output?

A. Our hemlock and spruce are assorted separately. I may say that the inferior grades of spruce are largely used for the same purposes that the hemlock is used for, and we sort our hemlock and spruce and sell it together ordinarily, although I have sorted some hemlock by itself and sold it separately, where we have had a special demand for it.

Q. Now, in the matter of building logging railroads, what would you say for the use of hemlock for purposes of that kind?

A. Well, I am using in the construction—I have this year—well, I suppose we have built and re-built from six to eight miles of railroad this year in building our logging spurs and getting onto our landings. We endeavor to lay the logging operations out so we will run a spur out to put the landings on, and we log between twenty and thirty acres to one landing. Those logging spurs and landings are built over and over again. Possibly we have built ten miles in our operations this year, and I am using hemlock ties altogether, which I have hewed upon the ground, and we use hemlock wherever possible, the defective hemlock, in building landings on which logs are hauled in order to put them on the cars.

Q. So despite the preponderance of the more valuable classes of timber, in a large yield there is, nevertheless, an actual market value for hemlock, is that true?

A. Yes, sir; there is a very active market, in the past two years, for hemlock. It has been with us, a much more ready sale than fir. Hemlock and spruce, I may also add, that the market price of spruce logs has increased, and spruce logs are at a higher market price now than they have been at any time since I began logging operations three years ago.

Q. Mr. Frost, what is the length of the logging railroad you operate over?

A. Our mainline is approximately seven miles, with spurs going out into our various logging opera-

tions, as we are hauling from six to eight miles.

Q. What is the greatest maximum curve of your railroad?

A. An eighteen per cent curve.

Q. What is the greatest maximum gradient?

A. We have one grade of 3.05%. Miles of it average 5.6% the whole distance. I want to say, in saying the average that that 5.6% is contemplated, as we call it, on a curve; in other words, it is flattened on the curve, and steeper on the tangents, or straight line.

Q. Do any of those curves or gradients to which you have testified, militate materially against the successful operation of your railroad?

A. We are moving over that road now, from forty to fifty standard carloads of logs per day, and we are operating our main line with one locomotive. If, I might add, that we have in the holdings that we are logging, that is, in the timber which we purchased, we have an unusual large percentage of hemlock mixed in with fir, so that we marketed last year, I suppose, approximately nine millions feet of hemlock, during the year, 1914.

Q. Hemlock then is a commercial timber in Western Washington?

A. We find it very much so. It was the most profitable timber we logged last year. If I may add, that our hemlock during 1914, we operated a log dump in the City of Seattle, and that our hemlock was all dumped into salt water, rafted and towed from Seattle to Anacortes and Bellingham, where the large box factories are situated, to whom I sold the hemlock, to tow that is fully as far as the tow from the mouth of the Pysht River to Anacortes or Bellingham. That condition does not obtain now. The tow is not quite so far, because of the fact that I am now dumping the logs, and my reason for making the switch is, that last year I paid \$1.60 per thousand feet from where our railroad connects up with the Milwaukee system and this way they made the rate of \$1.40 to Everett, which is 20c cheaper, although a longer haul, which

caused me to abandon my dump in Seattle and move to Everett; and our logs are now being dumped in Everett, and towed from there, a shorter tow.

CROSS EXAMINATION.

BY MR. EARLE:

Q. I did not get those last figures, Mr. Frost, what are those rates that you received to Seattle on the railroad?

A. Our rate to Seattle was \$1.60 per thousand feet, and if I can make an explanation of the rate, because that does not explain it all, we have to Seattle, the railroad fixed a minimum load of seven thousand feet per car, that meaning, if we failed to get seven thousand feet of logs on a car that we had to pay for the full seven thousand feet. Our logs were small and frequently we were not able to reach the minimum, and with the result that our actual freight was more than \$1.60. During the first year of our operations freight cost us \$1.72 a thousand because of the fact that we were not able to reach the minimum load. In this rate to Everett the Milwaukee Railroad, dealing with the same railroad, fixed the minimum of sixty-five hundred feet to the car, and the rate of \$1.40 which was a considerable advantage to us in doing that, and which caused us to make the change, and they stated that the Everett line was a branch line of railroad and they preferred to handle logs over that line rather than the main line of their transcontinental railroad, and they gave us that rate.

Q. This \$1.60 rate represents how long a haul?

A. That represents forty miles of haul.

Q. And the \$1.40 rate represents how long a haul?

A. 59 miles."

This is the only logging operation that the witness has been engaged in. He has made no other purchases of timber than the purchases through his Cedar Lake operations. They purchased from the city of Seattle about one hundred and eight million feet in a competition sale. This timber they are removing from the shores of Cedar Lake, which will be submerged

when the level of the lake has been raised. It is partially on the edge of the lake, but in some places, they cut back two miles from the lake.

A. No, sir, we built the whole line of railroad from Cedar Falls to Cedar Lake 4.37 miles of that road was built under contract with the city of Seattle, which provides that we shall keep and maintain the road, and operate it during the duration of our logging operations up there, and at the expiration of that time, the road is to be turned over, and to become the property of the city of Seattle. We built that under contract with the city of Seattle, and our contract price for grading, laying of steel, and ties and ballasting that 4.37 miles of railroad, and putting it in complete condition for operation, with unusually severe specifications, was \$3,750.00 per mile. The city furnished the 4.37 miles of steel, fastening and ties, and the remainder of the main line of railroad leading from the termination of the city road to our logging camp is our own road, our own steel, that we built ourselves.

Q. How many miles?

A. Approximately three miles of that, and then we have many branches and spurs leading off to our operations around fine timber. We purchased from the city only about one third of our operations, our purchases from the city, and the other operations we have under contract with the Weyerhaeuser Timber Company.

Q. Coming back to the railroad construction, is it not a fact that the city of Seattle built a road in from the main line of the Milwaukee, about, approximately one mile from the lake."

Witness says that under the contract with the city of Seattle, their logging company pays for the timber each month as they take it off, on a monthly settlement basis, and they have no particular risk, so far as the ownership of the timber is concerned, except as to the timber cut and lying upon the ground.

Witness does not think that the hemlock which he has got at Cedar Lake is better grade than the usual hemlock. Some of his hemlock is pretty good,

and some is low ground hemlock. This is hollow butted and heavy, and usually not clear, and the limbs grow close to the ground. Upland hemlock is taller, straighter, and smoother, and not inclined to ground rot.

“Q. Don't you know from the condition of the log market that you are getting better than the regular market price for hemlock?”

A. No sir, I do not think so. I think I have been getting the market price during the time I have been engaged in the logging business. I have no especial advantages over other loggers. I have had to rustle for the market. I went in under a disadvantage, because most loggers had an established market and I had to find one.

Q. Your logging operations are confined to those which you have at the present time at Cedar Lake?

A. My logging operations are at Cedar Lake.

Q. And your opinion as to the value of hemlock is based upon your experience in your logging operations at Cedar Lake and the hemlock there?

A. Well, no, my opinion is formed from a good many considerations, and I presume I have been very much like a boy with a new mechanical toy. Going into the logging business I became very deeply interested in it, and I have made a most thorough and comprehensive study and examination into all the phases of the logging and lumber business in the Northwest, and in the State of Washington, and my judgment is based, not only upon my own experience in logging, but upon the conditions surrounding it, and surrounding its use and demand for it. If I was to testify as to the value—

Q. Do you happen to know of any sales of hemlock having been made except those that you have made in your Cedar Lake operations?

A. You mean sales of hemlock logs, or timber?

Q. Sales of hemlock logs.

A. Not specifically. I do recall, I believe—I had in mind, and was trying to tell you of one special instance that—I am not sure whether it is in Jefferson County Logging Company, or not, but I was told—

MR. PETERS: Wait a minute—

WITNESS: By one logger last year that he received seven dollars a thousand for his hemlock.

MR. PETERS: You understand that when your question is objected to, you should stop. You are lawyer enough to know that you should wait until there is a ruling, and that the witness is supposed to wait until the Court rules.

I object to what was said to him, or what was told him by somebody else.

THE COURT: The objection is sustained.

WITNESS: Ask your question over.

Q. (Question read)

A. Any knowledge that I might have of the sale of hemlock logs would be error, under the ruling of the court. I understand I would not be permitted to testify to that.

THE COURT: The question is, was that all the information you had; that can be answered by yes, or no.

A. I have information, yes, in a kind of a way.

Q. Your fee from the County of Clallam, as attorney for the defense in this litigation, is partially on a contingent basis, is it not?

A. Am I obliged to answer that question?

THE COURT: Yes, you may answer it.

A. Yes sir. May I explain for the plaintiffs?

THE COURT: Yes.

WITNESS: I will undertake to fix the date by that month that I returned from our logging camps to visit my home in Seattle. I received a telegram signed by the County Auditor of Clallam County asking me if I would not come to Port Angeles to once. I came home Saturday night, arrived here about eight o'clock, and I took the boat for Port Angeles that night arriving there Sunday morning. I found the Board of County Commissioners, the County Assessor, the County Treasurer, and the County Auditor and the County Attorney of Clallam County, to meet me there on Sunday morning. They asked me to appear in this case. I think the Chairman of the Board of Commis-

sioners, I told him that I had retired from the practice of law, and no longer maintained an office; that I was engaged in the logging business, and would prefer that they retain other counsel. I was urged to take this case, because, as they said to me, I am experienced in matters of taxation, and because of the fact that I have appeared as counsel in a great many important tax suits in the northwest in the past few years, having appeared for Lewis County, in the trial of the Lewis County timber cases, for King County in the suit brought by Stone & Webster, interested in the Seattle Electric Company, and appeared both in the Superior and the Appellate Court; and those were the reasons that they urged——

MR. PETERS: I object to all this——

THE COURT: The reason you are compelled to answer is as to how it would affect your interest as a witness.

WITNESS: May I go on with the Commissioners? The Commissioners asked what my compensation would be. I says, "Gentlemen, I am not engaged in the practice of law and I will leave the compensation to your own discretion. I will take whatever you want to give me. I am not appearing because I desire to practice law, but because you urge me to do it, and the matter of compensation will be left to you, and you can pay me whatever you see fit, and since that time I have had no conversation with any of the Board of Commissioners, or County officials of Clallam County, in regard to the fee that would be paid me; but in order to comply with the Statutes of the State of Washington, they made, so far as my knowledge is concerned, their own terms, and tendered me a contract which I signed, and that was drawn up, and bears the O. K. of the County Attorney, and the approval of the Superior Court of Clallam County.

Q. (Mr Peters) And that is a contract for the contingent fee?

A. Yes, sir, that is a contract for a contingent fee, not entirely so. I am to receive a larger fee in the event we win suit.

Q. In the event these defendants are successful you are to receive twice as great a fee as in the event you are not successful?

A. Yes sir, that is true.

Q. How far is this operation, your logging operation from Seattle.

A. It is approximately 47 miles, 40 miles to the Milwaukee Railroad, and about 7 miles to our logging road; in a direct line it would not be so far.

(Witness excused.)”

G. M. LAURIDSEN, recalled as a witness on behalf of the defendants, testified as follows:

DIRECT EXAMINATION

Witness is handed a document which he states is a list of property he owns in Clallam County, with the exception of his residence and a couple of lots that he built on since the assessment in 1914.

Witness lives in Port Angeles; has lived in Port Angeles since 1892. Has no particular business, but is vice-president of the Citizens National Bank, and spends considerable time in there. His principal property is in Port Angeles, city lots; has had considerable experience in buying and selling real estate in Clallam County for the past twenty years; has kept pretty well in touch with real property values. The list which he has in hand is a tabulation of witness' estimate of real property values as compared with the assessment of same property for the year 1914, as put upon it by the assessor of Clallam County. This is a list of witness' own property. The valuations represent those at which the witness would be willing to sell his property in March, 1914. Witness is cross examined as to the competency of this list. He made up this list at home last Sunday and Monday. It was after he come down to be present at this case, after he had come down and gone home again. He came down here under the subpoena of the plaintiffs on Monday, and remained here during the first day or so of the trial; was here during the time that Tom Aldwell was under examination.

With reference to a list of property said to have

been handed in by him in an appraisal, plaintiffs exhibit "E", witness was not requested by anybody to hand in that statement. He volunteered to give the defendants figures after I saw that thing there.

Q. By this "thing" here, you refer to plaintiffs exhibit "E" that Mr. Aldwell was examined by?

A. That thing we were tricked into sending.

Q. That thing that you were tricked into sending; after you saw that and heard the testimony about it, did you tell counsel for the defense that you would go home and make up a list of property?

A. Yes sir, I told them that I would give them the real values of things. I told them I had about one hundred thousand dollars worth of property that I would offer you if you would take it at double the assessed valuation that was put on it in 1914.

Q. And they did not take it at that?

A. I was going to offer it to anybody that would take it.

MR. RIDDELL: There is a chance, Mr. Peters.

MR. PETERS: You suggested that you would go home and make an appraisal of all your property?

A. There wasn't any particular suggestion. I told them I would offer everything I had in Clallam County at double the assessed calculation in 1914.

Q. Then you went back and you checked up all the property that you have in Clallam County?

A. Yes, sir.

Q. And made a list of that as you have here?

A. Yes, sir.

Q. Then you took the assessment from the assessor's books?

A. No, I took from my tax receipts.

Q. And was that for the year 1914?

A. 1914. I did not have time to make them all up, so I brought a number of tax receipts and finished them up here.

Q. Did you take them for the year 1912?

A. No.

Q. You did not take them for that?

A. No sir, only for 1914. It is not all of them.

There are about six hundred lots, additional lots that are not on there. Those additional lots I will offer at the assessed valuation. If anybody will take those six hundred and thirty additional lots they can have them at the assessed valuation as put on by the assessor in 1914."

This tabulation of witness' values is admitted as defendants exhibit "29."

"Q. Mr. Laudirsen, will you take your memorandum (will you put exhibit "29" before the court)?

MR. PETERS: I desire the witness on the stand to give his testimony without the memorandum.

MR. EWING: I do not see how he can refresh his memory without the instrument before him.

Q. I wish you to indicate to the court on what part of the memorandum, or tabulation, are the six hundred lots which you would sell for their assessed value?

MR. PETERS: I do not think that is competent, what the witness will sell property for at this time.

MR. EWING: I will limit the time to the 1st of March, 1914.

MR. PETERS: That is not it; what was the market value, not what he might, or might not, sell it for.

THE COURT: It is a declaration against interest. I will overrule the objection.

MR. PETERS: Note an exception.

THE COURT: Exception allowed.

MR. PETERS: It is not an admission against his interest; if he could make a deal it would be much to his interest.

THE COURT: The question is not a part of the list these descriptions occur in—

MR. PETERS: He has changed it. He can ask at what price would he sell those lots for.

MR. EWING: I want to have him show to the court the tabulation that has been made, on what part of the tabulation is that list of lots which you say you would sell on the first of March, 1914, for the assessed valuation?

A. The last two sheets.

Q. And the valuations you put upon them on the first of March, 1914, is no greater than the assessed value?

A. No sir."

Witness bought lot 2, block 31, Norman R. Smith's sub-division shown on this tabulation, March 13, 1914. Witness is then asked by defendant's counsel:

"Q. That property, according to Mr. Ware's testimony was worth \$6,000 on the first of March, 1914; will you state what you paid for it?

MR. PETERS: I do not think that would be competent. It would be competent in cross examination for him to tell the individual sales and purchases, but not what he might have bought, by his own counsel asking him direct.

MR. RIDDELL: We are going to couple this up with a great many others.

THE COURT: The objection is overruled.

MR. PETERS: Note an exception.

THE COURT: Exception allowed.

Are those the same ones you asked Mr. Ware about?

MR. EWING: That is it, exactly. The foundation for this has been laid. I asked him if the testimony should show that that lot which is valued at \$6,000.00 should actually have been sold for \$2500.00, whether he would not claim from that that his judgment on valuation had been wrong, and he said "No".

He paid \$2500 for this on March 13, of that year. He supposes that was its value, or pretty near such.

Lot 3, block 31, Norman R. Smith's sub-division was bought by witness March 17, 1914, with a batch of other property. This lot was valued in that purchase at three thousand dollars.

Witness explains the manner in which he made up this tabulated statement of values as follows:

"Q. What was the manner in which it was made up?

A. I took them from my tax receipts in 1914.

I did not have time to make them all up and I brought those tax receipts along and finished here.

Q. (Mr. Peters) You made out this original statement which I hold in my hand, which is on the paper of the Citizens National Bank, did you not?

A. I did.

Q. You made that out in Port Angeles?

A. I did.

Q. What did you put down on that, how many of these claims?

A. I put down every one of them.

Q. Who put the furthest figures out here?

A. I put down the assessed valuation at home, and the valuation I would sell them for.

Q. The way you got at that was to take your tax receipts and you found what this Southeast of the Northeast quarter, and the Northeast quarter of the Southeast quarter; was assessed for on the tax receipts?

A. I did.

Q. And put that down in the next to the last column?

A. Yes, sir, next to the last.

Q. In all this property?

A. Yes, sir.

Q. Made out a complete list from the tax receipts you had?

A. Yes, sir, made a complete list from the tax receipts I had.

Q. And then sat down and put your own valuation after that?

A. Yes, sir.

MR. EWING: The other statements are made a little bit different from that.

MR. PETERS: Which other statements?

MR. EWING: That we will introduce later.

WITNESS: If these tax receipts are any good to you, you can have them, for 1914.

MR. FROST: Mr. Lauridsen, explained that he did not complete the list and he brought the tax with him and from the tax receipts the remainder of the typewritten list was made up.

MR. PETERS: I understand.

MR. EWING: Q. Since this has been typewritten you have carefully gone over it again?

A. Yes, sir.

Q. And you can say that the typewritten list which you have given the court is a correct statement under oath of the valuations which you put there?

A. Yes, sir.

MR. EWING: You don't object to it on that score, the assessment?

MR. PETERS: We may want to check it up later."

CROSS EXAMINATION

Q. Mr. Lauridsen, this paper which I hold in my hand here is the original of the typerwitten statement that has now been admitted as defendants exhibit "29", is it not?

A. Yes sir.

MR. PETERS: I ask to have that admitted as the plaintiffs' exhibit, as being the original tabulation from which the typewritten statement, exhibit "29" of the defendants is made up.

MR. FROST: Did you make any corrections or alterations of the appraised value after coming to Seattle?

A. I did on some of them.

Q. Were those alterations or corrections noted in this, or in the typewritten statement?

A. They are noted on that. I will explain how that kind came about. I thought I was to put on the valuation as of to-day, but counsel for the defense tells me you must make it as to the appraised valuation in 1914, in March. It is like this: I have cleared some of these lots since, or partly cleared them.

Q. Cleared some of the city lots?

A. Cleared some of the city lots, had them slashed and burned off, and in another case there had been a street put in front, and others where there was no street in 1914, and consequently made them a little more valuable, and he made some corrections as to that, put them back to say, March, 15, 1914.

MR. PETERS: Did those corrections appear on the pencil sheet here?

A. They occur right on there.

Q. And as I understand you, the way in which this was made up, was by putting down the assessed valuation of these various properties that you own, and then putting down your estimate opposite each lot, and opposite each assessment, your estimate of the value of it in March, 1914?

A. Yes sir.

Q. About how long did it take you to make this up, Mr. Lauridsen?

A. I don't know as it took such a great while.

Q. Didn't you go out and look at the property while you were making it out?

A. No.

Q. You have had those properties, many of them, for a long while?

A. I have had some of it for twenty years.

Q. What do you value the northeast quarter of the Northeast quarter, and the Southeast quarter of the Northeast quarter of Section 10, Township 30, Range 5?

A. That is an 80 acres in section 10, township 30, range 5?

Q. Yes, sir, an 80 acres.

A. (witness referring to paper)

Q. Never mind the list. Let's dispense with that at the present time, and give your recollection.

MR. FROST: We object to that, because it is manifestly unfair.

WITNES: It is to refresh my mind. I have never seen the property myself.

MR. PETERS: We have a right to cross examine him for his best recollection without his list.

THE COURT: He may go to the map and look at it.

MR. PETERS: Certainly, but I don't want any list.

A. That is my own list. I can get that back, can't I?

MR. PETERS: The court says you may go to the map and look this piece of property up, the northeast quarter of the Northeast quarter and the Southeast quarter of the Northeast quarter of section 10, township 30, range 5.

A. That is about eight miles east of Port Angeles.

Q. What valuation did you put on that as of March 1914?

A. I don't exactly recollect what it was, that particular piece.

Q. What valuation did you put upon it?

A. I have put that valuation down there.

Q. What valuation do you now put upon it?

A. I put the same valuation on it to-day.

Q. Will you state to the court what valuation you put upon it, or are you not able?

A. I have it all right, down here, on that paper there.

Q. I ask you what valuation you put upon it now from your own recollection?

A. I have it down, and I am willing to sell at those figures.

Q. Mr. Lauridsen, what valuation do you put upon Lot 5, the Southwest quarter of the Southwest quarter of Section 23, Township 31, Range 10, as of March 1, 1914?

A. I can't recollect all those. There are so many descriptions there.

Q. I am asking you what valuation you now place upon this property, as its valuation the first of March, 1914?

A. I have it already placed there, fir.

Q. What is it?

A. I can't tell you off-hand, without referring to that paper there.

Q. What valuation do you put upon lots 3, and 4, and 13 and 14, in section 3, township 29, range 9 West?

A. I remember that particular one; I have an undivided half interest in that, and I offered that at \$1500.00.

Q. What do you say was the value of it March 1, 1914?

A. \$1500.00.

Q. Worth no more than that then?

A. Not to-day.

Q. I am not asking you what it is worth to-day; I am asking you what it was worth, March, 1914?

A. I have answered that by saying "\$1500.00."

Q. It is worth the same to-day as it was March 1, 1914?

A. I don't think so.

Q. You don't think so; you don't think there was any flurry in March 1, 1914, which afterwards died out?

A. Not on that particular piece of property.

Q. There wasn't any flurry on these?

A. No, sir.

Q. Was there on any other property at that time?

A. Very little in 1914, It had died by that time.

Q. When was this flurry?

A. In the latter part of 1912, and the beginning of 1913.

Q. Then did the market assume a stable condition from March 1913, on through that year and 1914?

A. I can't say "stable," because there has been no market values on anything that is there. You could not say absolutely that this is worth so much; It is just as you could catch a man that would be willing to buy.

Q. There wasn't any market value that you could refer to?

A. Not so you could say that it is worth so and so, because you could not sell it; sometimes you might, and sometimes you might not.

Q. You say, you own an undivided half interest in that?

A. Yes, sir.

Q. Your half interest is what value, \$1500.00?

A. Yes, sir.

Q. What was it assessed for?

A. I do not know the exact rate now. It was assessed very high.

Q. What is the character of the property?

A. It is an isolated claim, way back in the Sol Duc Valley, up near the Sol Duc Hot Springs.

Q. Was it timbered?

A. It is supposed to be timbered, yes, sir, there is timber on it.

Q. You have it listed here as assessed at \$5,170.00.

A. That is what the tax receipts state.

Q. You think \$1500.00 was a fair valuation of that on March 1, 1914?

A. It might be worth a good deal more; but I am willing to sell for that.

Q. (Mr. Frost) You are willing to sell your undivided one-half interest for that?

A. Yes, sir, I am willing to sell my undivided one-half interest for that.

Q. (Mr. Peters) What sort of land is the Northwest quarter of the Southwest quarter of Section 26, Township 31, Range 10?

A. I can't tell you off-hand. I have 160 acres there altogether, and I could not remember the different descriptions.

Q. What kind of land was it?

A. I have never seen it.

Q. What valuation have you placed upon it as to March 1, 1914?

A. I don't recollect.

Q. I am not asking you what recollection you have as to what you did place upon it in this list; what valuation do you now place upon it?

A. I place the same valuation that you found upon that list.

Q. That is the answer you desired to make to my question?

A. Yes, sir.

Q. You will make no further one?

A. No, sir, unless I can refer——

Q. Refresh your memory by looking at this statement. Was there timber on this, or not?

A. There is timber on some of it, I guess. My best recollection as to that is somewhere in the neighborhood of two thousand, or \$2500.00, somewhere between that, but the exact figure I do not remember what I put down.

THE COURT: That is for the 160 acres?

A. The 160 acres."

Referring to the purchase of lot 3, block 31, Norman R. Smith's tract, said to have been purchased by the witness in 1914, for \$3000, the witness states it was bought through Mr. Aldwell, and with four or five others. It is not an improved piece of land. It was a purchase on three years time, with a down payment of \$2000, on that and some other lots. This was coupled with four other lots which were sold at the time; for all of which they were to pay \$15000. The other lots were lot 2, block 16, and lots 8 and 9, block 30, Norman R. Smiths sub-division. Mr. Aldwell figured that this lot was worth \$3000 out of the \$15000 purchase. Witness does not remember what the others were figured at. The others may have been figured at \$4000, or \$4500. Mr. Aldwell told them at the time that he had a buyer for them at a good figure, and that they would make some money, but he did not have the buyer, and they got "stuck". All of those lots were in the sluicing and regrade district. Witness and his purchasers figured out that the property would enhance a good deal in value by the improvements, but it turned out the other way.

"Q. You excepted from this list your home and two other lots; why did you except your home?

A. I do not want to sell my home.

Q. What is the value of that?

A. I have no value on it.

Q. Set one.

A. I don't care to.

Q. I am asking you what was the value of your home property, Mr. Lauridsen, on March 1, 1914?

A. I have no value set on it.

Q. What is the description of it?

A. It is in lots 17 and 18, block 31, and the east part of lot 16.

Q. Block 31, and a part of lot 16?

A. Yes sir.

Q. How long have you kept it as a home?

A. For about twenty years.

Q. What was it assessed at March 1, 1914?

A. I don't remember.

Q. I will ask you now if you will put upon that the value, the market value of that property, March 1, 1914?

A. I don't care to.

MR. PETERS: I ask the court to direct the witness to answer.

THE COURT: If you have an opinion regarding the market value of it, you will give it; if you haven't one, say so.

A. I really have none, because my wife don't care to sell it.

THE COURT: Q. You are not asked about how much you would take for it; you are asked about what the market value was March 1, 1914, if you did want to sell it, and some man wanted to buy it, and you were not obliged to sell it, and the other man was not obliged to buy, what do you think it is worth?

A. There is a very peculiar circumstance connected with that. I had two buildings on it, and when this regrade come up I had to move those buildings, and one of the lots on the corner I had washed out entirely to come level with the new streets, so we are now living on one and a half lots with our two houses, and this improvement has cost forty-five hundred dollars since, that is not including the regrade, and assessment.

Q. Disregarding that; I ask you what the value of this property was, those three lots, March 1, 1914, to the best of your judgment?

A. Oh, I don't remember. I suppose lots in there before the regrade would sell for something like \$800.00, I should judge.

Q. \$800.00?

A. Yes sir, I should judge; There is plenty of view over the bay where I live there. They might bring even more than that; but somewhere around there, \$800 to a thousand dollars.

Q. When did the regrade go through that?

A. It started in the early Spring of 1914, probably in April.

Q. It was after that period I referred to here as March 1st, that the regrade started?

A. Yes sir.

Q. That is the actual work on the re-grade started?

A. Yes sir.

A. The re-grade started around somewhere March or April, 1914.

Q. And you have been assessed on those three lots \$4500 for this re-grade?

A. No sir, I haven't been assessed; I have been assessed 20 odd hundred, and moved the house; and cut out the corner lot where one of my houses formerly stood to be level with the new street grade, which has cost me altogether about \$4500. That is the reason I did not care to state the value.

Q. In this valuation of \$800 to a thousand dollars a lot, you were not including the value of the improvements then?

A. No sir.

Q. What was the value of the improvements on it March 1st, 1914.

A. I do not know what the value of the improvements was; I never looked at that. You mean the assessed valuation of it?

Q. No sir; I mean the value of the improvements, the market value of it? What it could have been sold for to a man who wanted to buy it, if you wanted to sell them on March 1st, 1914?

A. I could not tell you.

Q. Why can't you tell that just as well as you can make out a list of all those other properties, Mr. Lauridsen?

A. That is unimproved.

All the other property in this list of witnesses' is unimproved. Most of it is property he bought in on tax sales, and some in wild-cat lots on top of the hill. All of the lots on the last two pages of exhibit 29 are "wild-cast stuff". A great deal of this property the witness has never seen.

Q. What was the valuation March 1st, 1914, of the west 7 feet of lot 8, and all of lot 9, and the east half of lot 10, tide lands west of Laurel Street?

"A. I think there is 82 feet there. There is 7 feet, and 25 feet, and 50 feet. It is down in one bunch there, I think, isn't it?

Q. What is the valuation of this bunch together; the west 7 feet of lot 8, and all of lot 9, and the east half of lot 10?

A. I hold that a little bit higher than I could sell for; I hold it for about \$3000, the whole bunch.

Q. You hold that for \$3000?

A. I would, just at that time. That property has a speculative value.

Q. What was the value all that time on Lincoln Park, lots 12, 13 and 14, and of 15, and lots 26 and 27?

A. I would sell them for about \$1500.

Q. (Mr. Frost) You mean \$1500 for the bunch?

A. Yes, sir; for the bunch; they are bunched that way. I think they are assessed for a thousand dollars.

Q. (Mr. Peters) What was the value on that date of Lots 19 and 20 of block 35?

A. About \$4000.

Q. Now you have gone over this list during this last recess?

A. No, sir; I did not; I kept away from it. I looked at it for a minute. I took it that question would be asked.

Q. You did not go over there and take that list and read it?

A. I did, but I did not look at it two minutes.

Q. You did not look at it?

A. I looked at that ten you asked me about. You asked me about 80 acres in section 10, Township 30, and Range 5, and I looked at that.

Q. How long were you looking at that list?

A. A minute or so. The rest of the time I was talking to your crowd—

Q. When you went over there in those back benches, you took out that list and looked at this one lot?

A. Just that.

Q. Didn't you look at the other lots?

A. What was around there?

Q. To refresh your recollection on this list?

A. I hardly think it is fair to take away the list that I took from my books which are private.

Q. For that reason you thought you had a right to refresh your recollection through the recess?

A. I didn't look over but one or two pieces. The rest of the people will tell you so. I did not look at that only for a minute.

Q. What was the value on the dates given of lots 1 and 2, 19 and 20 of block 103?

A. Where is that located?

Q. Lots 1 and 2, 19 and 20, of block 103?

A. What was the question?

Q. I asked you what was the valuation, the market value of those lots on March 1st, 1914?

A. It may be around, possibly \$600. It may be a little more. I might have put a higher valuation on it, on account there is a street in front of them now.

Q. If you have here on this list a thousand dollars you desire to change that?

A. No, sir; I desire to leave that.

Q. Now you change from \$600 to a thousand?

MR. EWING: Explain it right now.

A. Yes sir, whatever that valuation is on there, that is the valuation.

Q. (Mr. Peters) I understand; I asked you

what your valuation of those lots was on the first of March, 1914, and I understood you to say it was around \$600.

A. I said I might have put it from 6 to \$800, didn't I say that?

Q. Then I asked you if it showed it was valued in this list, in exhibit 29, of a thousand dollars, whether that would change your opinion; now you say that they were valued at a thousand dollars.

A. I did not say so; If that list says so, and I put that down. I suppose that it is almost impossible to put a value on any property in Port Angeles, unless you have the figures to show what it cost you, and how long you have held it. I have them at home. I haven't them with me. The papers you have there you asked for, and then you put it in evidence, and I have nothing before me whereby I can place a valuation on several thousand pieces of property.

Q. Mr. Lauridsen, at the time you put down the valuations on this list here, plaintiffs exhibit "F", out of the assessed valuation which you had already put down, you had in mind the fact that one of the contentions of the plaintiffs in this case is that property of that character is very much under assessed, didn't you?

A. I will tell you how I come to make it up.

Q. I ask you to answer that question first, and if you desire any further explanation afterwards you may make it.

A. I had in mind that I would like to sell all of that property at double the assessed valuation, everything I have got, except my home and those two lots mentioned. I was here the other day and I heard the outrageous high figure that Mr. Ware put upon the property for you, and I concluded that if property was worth that I was a millionaire, pretty nearly; and it is worth it, so I offered to the defendants in this case, if they wanted to get all I had in Clallam county at double the assessed valuation, I would come here and offer it, and it is here for sale.

Q. You say that it was from that point of view that you made out this list?

A. Exactly." On re-direct examination, witness testified as follows:

"Q. The lot where you gave a valuation on the stand of \$800, Mr. Peters called attention to the fact that you listed it at a thousand dollars, and said the street improvements had nothing to do with it? Will you explain how you put the valuation of a thousand dollars upon that lot, what other features than the mere market value did you consider?

A. It is pretty hard to state any particular market value.

Q. You said something about the street having made a difference?

A. There is a street that has been put in there.

Q. And that has added to the value of the lot?

A. Yes sir.

Q. That is since March 1st, 1914?

A. I don't think so. I think it was on there before.

Q. But that is a fact that it would make you add to the value?

A. It is one of those things that is almost impossible. Sometime I might ask you a thousand dollars for a lot, but if you offered me \$800 I would be glad to take it.

Q. But the value of your home property—that you put \$500 a lot on was it?

A. Where we live?

Q. Yes sir.

A. I said from \$800, possibly to a thousand; I did not know.

Q. Do you remembr about Mr. Brown buying a lot right near there, or in the same block for \$375, or \$575, Maybe it was.

A. No, sir; I don't know. I don't know anything about that.

Q. Mr. Peters spoke about a flurry, Mr. Lauridsen, state to the court what happened in the way of a real estate boom, if there was such a thing in Port

Angeles between March 1st, 1912, and March 1st, 1914, just what happened to the real estate market in that town?

A. Well, there was a number of real estate men like Mr. Petit, and a fellow by the name of C. P. Dodge, from Seattle, they came up there, and a couple or three Victria real estate men came over there, and they bought property and sold it at fabulously high prices, whether it was genuine or fictitious, I don't know. I think I know some were genuine. I know of lots 6 and 7, block 31 right near where I live there that Mrs. Chambers bought a few years ago for \$700 and during this flurry she sold it for \$3200, half cash, and took a mortgage for the other half. This man Dodge, he sold it afterwards for \$5000 and got a thousand cash, and he said he took a second mortgage for a thousand dollars. To-day that lot is being foreclosed for the first mortgage.

Q. Of how much?

A. \$1600. That is either 6 or 7, I think it is lot 7, in block 31.

Q. Can you state when that flurry began?

A. It began in December, 1912.

Q. How long did it last?

A. Well, it is very hard to say how long it lasted. It lasted a few months, and then it commenced gradually to go down.

Q. In what way were its effects reflected on realty values in Port Angeles?

A. What happened?

Q. Real estate values in Port Angeles?

A. It had the effect that everybody put prices up on property.

Q. Did it stampede the people in Port Angeles?

A. That is a very hard question to answer. It made some of them wild. They would not sell at any price for the time being. Now you can go back there a year later and buy for almost nothing.

Q. Was the condition of the real estate market that obtained from December, 1912, or three or four

months afterwards, a natural or artificial condition in your opinion as a real estate operator?

A. It was artificial, absolutely.

Q. Was it due to any natural growth or development of the town, which would warrant conditions that obtained at that time?

A. No sir.

Q. As I understand you it was an artificial condition that was brought about by outside people? Is that true?

A. Outside people created the boom by buying this particular lot, and that was published in the papers that it was sold for five thousand dollars, and one poor fellow came over from Victoria with \$40,000, A. B. Steele, and he put it into different pieces of property, and he has lost the whole thing to-day, and he got hold of a lady by the name of Mrs. Glasgow that came there with Mr. Petit here, I think it was, that brought her down, and she had \$10,000, and lost it all. I have one of the most pitiful letters from the lady how she was taken in by buying property and paying so much on it, and was given to understand secretly that it could be sold at a bigger price, and she lost everything that she put in.

Q. You heard Mr. Wares testimony?

A. I heard the first of it.

Q. State whether or not his valuations are not based in your opinion upon the prices brought about by the boom?

MR. PETERS: I object to that; if would be for the court to say.

MR. EWING: I will withdraw the question. I will withdraw the reference to Mr. Ware."

RE CROSS EXAMINATION

On recross examination witness admits that Petit & Sons, real estate men, come down to Port Angeles, November or December, 1912, and the man came from Victoria with \$40,000, and these people buying property fast and loose, made a pretty active market around Port Angeles for awhile. The Milwaukee railroad went down there in 1912 and 1913, about the winter

of 1912. The Michael Earles mill was built in May, 1914. It was pretty well along in 1913. The Olympic Power Plant was pretty well along, but the bottom had gone out of it, and they did not know whether they would succeed, or not, in getting it back. Witness admits that Earles' mill certainly had some effect on the real estate market. Witness has heard that some two hundred or four hundred men were employed in the Earles Mill. Witness and others have heard of all sorts of rumors about what the mill would probably cost and would do. He had heard that the mill would cost about a million dollars; admits that it is a big plant. Witness admits that the construction of this mill did help the real estate market of the town. He, therefore, would not call the effect of the Earles mill upon the real estate market artificial. The mill is still there; the railroad is still there, and building, and the Aldwell Plant did get the bottom put back into it, and is holding.

REDIRECT EXAMINATION

Mr. Frost, counsel for defendants, states that the Federal census for 1910, shows a population in Port Angeles of 2200 people. Witness Lauridsen says he thinks there are thirty-five hundred, Or four thousand, Real estate men claim five thousand. Being asked if lots in that town may be valued at \$15,000.00, witness says, "I would not pay that for any lot in Port Angeles", notwithstanding the fact that the Earles mill is there, and the railroad is there and the power plant is there.

The Milwaukee railroad connects with the Port Townsend and Southern. It does not connect with any of the Trans-continental roads.

The employees of the Michael Earles Mills live principally around the mill. That is two miles from town. The men at the logging operations stay in the woods, thirty to thirty-five miles from town. The brewery that was up there went into the hands of a receiver in 1911; thinks the cannery was in operation last year; does not know where the machinery is; had heard something about it being taken to Neah Bay to

put in a cannery there. He does not know the truth of it.

A rival steamship line to the Puget Sound & Navigation Company operating from Port Angeles to Seattle was established, but went into the hands of a receiver in the fall of 1913.

Over plaintiffs objection witness testified that one or two grocery concerns went down during this period, but no large concerns that he can remember of.

“Q. Do you remember the history of the purchase and sale of lots 2, 3 and 4, in block 311, and lot 14, in block 309, which you bought for your brother, Sam?”

A. Yes, sir.

Q. Do you remember what you paid for them?

MR. PETERS: When was this?

A. In January, 1914,—I paid \$140.00.

MR. RIDDELL: That is the one on the map assessed at \$120.00?

MR. EWING: Do you want to accept that statement of assessment, Mr. Peters?

MR. PETERS: Yes, sir.

Q. (Mr. Ewing) State the facts about the purchase of lots 18, in block 54, and lots 7 and 14 in block 172?

MR. PETERS: I do not think unless those are lots referred to by our testimony it would be competent, for this reason: that a person could be put upon the witness stand, and he could select favorable instances without limit, and we would have no way of getting back of that, and discovering the facts about it, and that is the reason why, in an opinion witness, the court allows the person who puts him upon the stand to ask him the general questions as to the market value of property in general.

THE COURT: The objection is overruled.

MR. PETERS: Note an exception?

THE COURT: Exception allowed.”

Lot 18, block 54, was bought in January, 1914, for \$300. It is stipulated by the parties that this lot is assessed for \$200. Lots 7 and 14, block 172, were

purchased at about the same time for \$175. This was assessed for \$100.

Referring to lot 1, block 308, and lot 13, block 392, and lot 13, block 120, of Carters Addition, witness is asked by defendants counsel to testify about the purchase of it. This is objected to by the plaintiff upon the same grounds as before, in the following manner: "MR. PETERS; I suppose it was understood that the same objection goes to all of this examination, and the same ruling and the same exception?"

THE COURT: It is so understood."

This was bought December 29th, 1913. Witness paid \$100 for the three lots; the assessment on these three lots is \$70.00. These were purchased in the open market.

RE CROSS EXAMINATION.

"Q. You seemed to have a great deal of faith in the market at that time?"

A. Well, I have always had a good deal of faith in Port Angeles.

Q. You were doing a good deal of buying of lots about that time, January, 1914, and December, 1913?"

A. That is about all I did buy, what I mentioned here.

Q. They were bargains, weren't they?"

A. Well, they were offered at that figure.

Q. These were bargains, were they not?"

A. I would not say they were bargains. I would like to sell them to-day for the same figure.

Q. I am speaking of the conditions at the time you got them; you considered them a good deal?"

A. I considered that property would go up, but it did not.

Q. You considered that you had a bargain in the purchase, did you not?"

A. I considered that I was buying them cheap enough, yes sir."

Witness admits that the Milwaukee Railway runs into the timber at the West of Port Angeles about thirty-five miles; east, it has not been completed

further than Sequim, but is projected to build to the Sound near Port Townsend. It is projected to run a line of car ferries from Port Angeles to Seattle, and the ferrying charges are absorbed by terminal freight rates on carload lots.

Witness admits that the Puget Sound Navigation Company is to-day operating the "Sol Duc", the "Souix", the "Waialeale" and the "Bellingham", from Port Angeles to Seattle. Witness admits that the "City of Angeles" to which he had referred as being in the hands of a receiver, was a slow boat, which the Puget Sound Navigation Company, with its fast boats had run off the Sound.

(Witness excused.)

G. E. SHIELDS, a witness for the defendant, sworn, testified as follows:

DIRECT EXAMINATION

Has resided in Port Angeles for the last 28 years; is in the Cigar business; has been in the store for about two years; has been interested in the store for thirteen years; his store is practically in the center of the business portion of the town. It is quite a place for everybody to congregate. Lots of gossip going on there. Witness never heard of any conspiracy or concerted action, agreement or understanding, between any of the county officials of Clallam County with reference to any intention to tax the timber owners in the west end of the county out of proportion with the other taxable property in Clallam County. If such conspiracy had existed, witness thinks he would have know of it, as he went around with all the young fellows, and particularly in a political way the last twelve or thirteen or fourteen years.

He was city clerk for four years, councilman-at-large for one year; has been pretty actively engaged in politics for the past 14 years; is a Democrat.

The members of the Board of Equalization for the years 1912, 1913, and 1914, were four of them Republicans and one Democrat. Mr. Hallahan was a Democrat. They all made separate campaigns.

No. 2905

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

CLALLAM LUMBER COMPANY, a Corporation,
Plaintiff,

Appellant

vs.

CLALLAM COUNTY, a Municipal Corporation, and
CLIFFORD L. BABCOCK, Treasurer, De-
fendants,

Appellees

RECORD ON APPEAL

(In Four Volumes)

Vol. 3—Pages 437 to 762

ON APPEAL FROM THE UNITED STATES DIS-
TRICT COURT FOR THE WESTERN
DISTRICT OF WASHINGTON, NORTHERN
DIVISION.

Filed

SHERMAN PRINTING AND BINDING CO., SEATTLE, WASH.

JAN 2 - 1917

F. D. Monckton,
Clerk

CROSS EXAMINATION

Witness reads most of the news papers. He is asked the following questions:

“Q. And during the campaign of Mr. Hallahan and Mr. Hansen wasn't there frequent mention in the newspapers of the desirability of placing a high assessment on the timber owners?”

MR. EWING: I object to that question in that form unless it connects these two men with it.

THE COURT: Objection overruled.

MR. EWING: Note an exception.

THE COURT: Exception allowed.

A. I believe in one paper there was some mention, yes, sir, at one time, of that.

Q. And did these two gentlemen, Mr. Hallahan for assessor, and Mr. Hansen for County Commissioner, go out with the expressed, or implied, platform, and run on that platform of placing a high assessment on the timber; don't you know that as a matter of fact?

A. I do not.

Q. You do not know that?

A. No, sir.

Q. You never heard of anything of that kind?

A. There may have been one or two said something like that; I never heard of any concerted action on their part.

Q. Do you mean to say that you did not know of Mr. Hallahan's running on that platform, and having made pledges as the prospective County Assessor, about placing a high rate of assessment on timber?

A. No sir I did not.

Q. You do not know that?

A. No, sir, not that he ever made pledges to place a high rate of assessment on timber.

Q. Without making any express pledge don't you know that he ran on that understood platform and plank?

A. No, sir, I do not know.

Q. Are you dead sure of that?

A. Well, I would not say that he did not say it

to some people. I never heard him say it, or never heard him express it in any way around where I was around."

Witness says he does not know that it was generally understood so, would not say that it was not so generally understood, because he could not answer for what other people understood. His statement with reference to Mr. Hallahans would apply also to Mr. Hansen. Would say that it was not generally understood that Hansen was running on a platform of "sticking it to the timber owners".

Witness had heard of the Taxpayers League; thinks it was started in the east end of the county; does not know that the League was formed for the express purpose of influencing the County officials to place a high rate of assessment on timber, but does know that some officers of the league came down and made an awful kick on the assessed valuation that was placed on timber. Does not know personally of this incident. As witness understood it, the purpose of the tax payers league was to get a more equal assessment of all the lands. From the way the assessed valuation of Port Angeles property has been "boosted", witness thinks it has been the general intent of the county officers to raise the assessed valuation of all classes of property, including valuations on Port Angeles real estate and stocks of merchandise, which have been raised the same as all other property has. While there maybe two or three that express such opinions, witness never heard the general expression that any section of the county should be discriminated against.

(Witness excused.)

C. F. BROWN, a witness called by the defendants, sworn, testified as follows:

DIRECT EXAMINATION

Has lived in Port Angeles for twenty-four years; is a lawyer; is a Republican in politics, but not particularly active. Is informed on local political conditions. Mr. Brown knows Mr. Hansen, Mr. Hallahan, Mr. Babcock, and Mr. Lotzgesell; was familiar with their

campaigns and knew what they were doing; never heard of any such conspiracy as is charged by plaintiffs. Has no knowledge, and has never heard of any conspiracy, confederation, understanding, agreement or concerted action of any kind between the assessing and equalizing officers of Clallam County themselves, or between them and any other persons, to discriminate against Ruddock & McCarty, the Clallam Lumber Company, or any other persons in Clallam County, or in favor of any person or corporations in the matter of the assessment or equalization of taxes of Clallam County for the years 1912, 1913 and 1914. If there had been any rumors of such conspiracy, they certainly would have come to his ears.

On cross examination witness states that the bulk of his property is in Port Angeles City lots, though he owns some small timber holdings up on the Sol Duc River. One comprises 140 acres and the other is a half interest in 160 acres, described respectively, as lots 2, 3, 14 and 15, in Section 30, Township 9, Range 29, and the 143 acres in the Northeast Quarter of Section 2, Township 30, Range 10, which he has owned for 10 or 11 years. All of the men inquired about, Babcock, Lotzgesell, Hallahan and Hansen, are personal friends of witness. His interest and participation in local politics was sufficiently active so that he could get all the local political gossip.

On redirect examination witness says that he is chairman of the County Central Committee of the Republican Party, and has been so for one year.

(Witness excused.)

CHARLES HAGGITH, sworn as a witness on behalf of the defendants, testified as follows:

DIRECT EXAMINATION

Witness is a broker, real estate and insurance man, and has lived at Port Angeles for eight years; engaged in this business for twelve years. Witness says that in the early part of 1912, the Port Angeles real estate market was very quiet. In November of that year, certain parties created a premature boom, during which property was sold at prices never realized before, nor

maintained since. The operations of those parties lasted during November and December, 1912. The effect did not subside until early in 1913. This activity of 1912, induced outside real estate agents to flock to Port Angeles and open offices; and there were a great number of operators who came there at that time, and remained only for a few months. Property has since depreciated to practically its former level. This boom condition was slightly natural, but almost wholly artificial. The men who brought it about were C. P. Dodge, of Seattle, and other real estate men, amongst others, H. C. Petit, John Davis, Dr. Smith, and Mr. Ankeny. None of these men named maintained offices in Port Angeles, except Mr. Petit, for about six months. Mr. Dodge picked out a certain business section down town on the water front, wrote to the owners, and took options, as far as possible, on this property. All the first operations were done under options. The sales were largely made to real estate offices. The operations of others were all the same, with the exception of Mr. Petit. Mr. Dodge sold everything that he had bought with the exception of one lot. The sales of this property were practically closed before the end of 1912. Mr. Dodge was representing Mr. Ankeny, Mr. Davis, and Mr. Smith. Mr. Dodge's operations were largely done under cover because he wished it to be known that he was buying, and he had practically made his sales before the local people and the other operators knew it, and he was buying at the same time he was selling.

Witness says that the population of Port Angeles is now between four thousand and forty-five hundred. A census of school children recently taken by the chairman of the school board, gives a population of forty-four hundred. If the whole town were sub-divided into lots, witness thinks there would be twelve thousand lots, 50 by 140 feet; allowing six lots to the acre, would make about two thousand acres. If apportioned amongst the population, this would make three lots per capita, or twelve to a family of four, or two acres of ground.

Witness has wide acquaintance in Port Angeles; knows practically everybody in town. His acquaintance is such that rumors of a political combination existing would reach his ears if any were made. He is a Republican. Keeps in touch with the political situation. He knows Mr. Hansen, Mr. Hallehan, Mr. Babcock, and Mr. Lotzgesell. Mr. Lotzgesell is not a resident of Port Angeles, but of Dungeness, fifteen miles away. Mr. Hallahan is a democrat. The others above named are republicans. Thinks the issues of the campaigns of those men for office were along party lines. There were no local issues.

Witness has no knowledge and has never heard of any conspiracy, confederation or understanding or agreement or concerted action of any kind between the assessing and equalizing officers of Clallam County themselves, or between them and any other persons to discriminate against Ruddock & McCarty or the Clallam Lumber Company or any other timber owners in Clallam County, or in favor of any other persons or corporations in the matter of the assessment and equalization of the taxes of Clallam County for the years 1912, 1913 and 1914; and that if the same had actually existed or had been generally rumored, it would have come to the knowledge of the witness.

Witness' qualifications as a real estate expert are admitted by plaintiff.

Witness is familiar with the recent sale of the property known as Hanning Hall, situated on lot 20, block 14 of the townsite of Port Angeles, regarding which Mr. Ware testified that its value was \$15,000 on March 1, 1914. He personally took the option, at the time Mr. Hansen owned it, and made the sale, and subsequently acted as agent for the owners, collected the rent, and looked after the property for a year. He took the option in the later part of October, or November, 1912, and the sale was made before the 1st of the year. The consideration was \$10,500.00. This lot was never worth \$15,000 with the improvements. Prior to that time this lot was offered by Mr. Hansen to the witness for \$5000 with the improvements; that is,

prior to the active movement of that fall. It had been on witness' list for years, with a five per cent commission.

In witness' opinion only the business improved down town district in Port Angeles furnished a definite basis for valuation at all times during the period between March 1st, 1912, and March 1st, 1914.

CROSS EXAMINATION

On cross examination witness admits that the downtown district referred to was substantially the improvement district No. 11, included in the Wiley & Morse sluicing contract, except the eastern part of this district, which is wholly unimproved.

Witness would say that the sale of lot 19, block 15, by J. C. Christensen in September, 1912, for \$9,-500.00, was a part of the boom of November and December, 1912. Witness has heard that this was the consideration for this sale.

Witness is satisfied that the sale of three corner lots at the southeast corner of Laurel Street and Front Street, by John Hansen, chairman of the Board of Equalization, to Mr. Glines, president of the Olympic Power Company, for \$50,000.00, was a part of the boom movement. Witness took the option and made the sale. That was the correct price. The option was taken in November, 1912. This was one of the first options the witness took. They took a number of options, and Mr. Hanson had been offering the property for \$35,000 and the witness thought if he could get an option at that price there was an opportunity to make some money, so he went to Mr. Hansen with the intention of getting an option, and that is how he came to get the option on Hanning Hall. The property is described as the west 5 feet of lot 6, and lots 7, 8 and 9, in block 16 of Norman R. Smith's subdivision; 155x140 feet, with a 2-story frame building. The frame building is occupied by a bank and stores, and at that time contained the post office, 155x140 is the size of the building, that is the frontage of the building; there is a court on the back that is not covered, and a two-story building with what is known as the Port Angeles

opera house above the offices. The option was obtained in November of 1912. The transfer of the property is in escrow at this time. Witness does not think that the mortgage and deed have ever gone on record. The transaction is in the shape of a contract, the deed and mortgage and notes are all included, but are held by the Clallam County Bank, which has an equity in the property and is holding the papers in trust. The Bank of Clallam County is situated on that corner, and was a tenant of Mr. Hansen, who was the owner of the property. These men, John Davis, R. V. Ankeny, and Dr. Smith, referred to by witness as conducting the boom in Port Angeles, are all prominent and wealthy business men of the city of Seattle, and have been so during the eight years that witness has been on the Coast. The Milwaukee Railroad first began construction work at Port Angeles in the early part of 1913. They have made surveys and, perhaps, done some preliminary work prior to that time. This construction work has progressed steadily ever since.

The work on the big mill started about 1913. So far as the number of men employed is concerned, that is the largest industrial plant in the county.

The Olympic Power Company turned on its power in about December, 1913, and it has been operating continuously ever since, without any shut-down, but the amount of power used has never been increased. They furnish light and power for Port Angeles, Port Townsend, to the U. S. Navy Yard at Bremerton, to Charleston, and Sequim.

Witness admits that Port Angeles people had expected a great deal of advancement in values of real estate by the construction of the railroad, and the completion of these industrial plants; but that thus far the railroad, except for making possible the operation of the mill, has not done the town a great deal of good, for the reason that it has no outside connection. It has no passenger schedule, and the road is operated wholly as a logging railroad. Witness admits that all of Port Angeles lumber is being taken, so far as the railroad traffic is concerned, on the Milwaukee car

ferries, and the export business is being taken care of by steamboats, and the passenger business from Port Angeles is being taken care of by the boat service of the Puget Sound Navigation Co.

Witness will not admit that this talk of depreciated values is manufactured depreciation.

Witness says that in 1912, there was a great deal of optimism in Port Angeles as regards the beneficial effects of the railroad and the mill. To-day the railroad is a partial realization. It has done the town very little good; only insofar as effects the mill. The railroad is employing at this time only four men in their office. That has increased the population of Port Angeles by four families, and none of those has, as yet, purchased homes in Port Angeles. The mill employs about 350 to 400 men, and not 5 per cent of those have ever made arrangement for a permanent residence in Port Angeles. Mr. Earles maintains a store at the mill, and supplies his help with groceries, dry goods, meat, and practically everything that they require; so that, the mill, outside of furnishing work for some few people who have always been residents of Port Angeles has not had the effect that they anticipated.

Witness admits that ten colonies have sprung up in the section where those employees live; they have not built cottages or bungalows, not over five per cent. The mill is two miles from the town. Witness says that some people in Port Angeles have discovered quite a long time ago that these things haven't brought the anticipated prosperity. Asked as to how long ago his real estate office discovered it, witness says, "Well, I can only say that the business that we have had with the mill employees has been disappointing.

Q. You haven't been able to sell those mill employees some of those lots that you own that you expected to sell?

A. That is what I mean, exactly."

Witness says that he was impressed with the depreciation of Port Angeles values early in 1913, realized it fully the first of the year, 1914.

On further cross examination witness Haggett

says, that while the real estate operations of Mr. Dodge and his associates practically concluded in 1912, the activity of the market attracted other people, such as McCutcheon Bros., who were large Canadian operators, who established an office in Port Angeles in March, 1913. Values did not depreciate immediately, but the demand did. Witness would not say that property sold as high in 1913.—The course of the market kept going down, and is to the present time. Witness says that the help employed during the construction of the big mill was largely foreign help, and the skilled labor, millwrights and the like, were mostly imported, and were single men, with headquarters at the mill boarding house.

“Q. It is your view that impetus given by these three large industries going there, did not begin until the spring of 1913.

A. Yes sir, it did; for the reason that during the fall of 1912, the commercial body, and others interested in the building of the railroad, and the building of the mill, had a number of meetings in the opera house, and as you possibly know, raised approximately one hundred and ten thousand dollars as a bonus for the mill and the railroad and all of these.

Q. For the Mike Earles mill and railroad?

A. Yes, sir, the local people, I think, donated twenty-five thousand dollars for the purchase of the site of the Earles Mill, and during the soliciting of all this bonus they held meetings at which more or less optimism was shown, and the papers published, everything possible in order to raise this bonus, and I think it was largely the effect of that that created the psychological moment for that boom, and Mr. Dodge and his associates realized that there was a psychological moment.

Q. The public in Port Angeles, as I understand it, did not realize that the mill was not going to bring them what they thought, and the railroad was not going to bring them what they thought, until the spring of 1914.”

Witness thinks the big mill was operating early

in 1914; was being tried out in March, 1914. Admits that it was not until the mill began to be operated that the Port Angeles people discovered that the mill operators were not going to buy from them. At the time that bonuses were solicited Mr. Earle had stated that the mill would not maintain a store. Of these bonuses, \$25,000 was to the mill, and \$85000 to the Milwaukee railroad.

Witness would think that the mill property occupies perhaps twenty acres of ground.

REDIRECT EXAMINATION

On redirect examination the witness says that the Glines sale was not a cash transaction, but on terms. Witness thinks that the actual cash payment was \$5000, and that there is now about \$33000 of the \$50,000 unpaid. The actual cash paid on the transaction up to this time is seventeen thousand dollars on the property. The original terms extended over five years but since that time there has been a change made in it. Mr. Glines was interested in the Power Company and the difficulties that Company had made it necessary to negotiate different and more lenient terms. This is the same tract that the witness described as containing an area of 155 by 140 feet. Witness states that town lots in a town such as Port Angeles, are articles of speculation just like grain on the Board of Trade, and that they had a "Bull Market".

Being requested to illustrate on the map of Port Angeles (Defendant's Exhibit) where the Mike Earles mill is with reference to the rest of the town, witness states that, "The original Earles property occupied Block F and Block E of the Stimpson tract; since that time they have acquired the tidelands in front of Blocks 134 and 135, making the property at this time square on the West with K street. The retail district takes in from Lincoln to Oak on Front, with some stores on First between these same streets. The distance from the town to the mill is about a mile and a half or a mile and three quarters.

On cross examination witness admits that the town is continuous from the business district to the

mill. In that it is all platted property and the streets are continuous and open out to the mill, and have been since the mill was built, Third street being a continuous thoroughfare from the mill to the business section. That there are streets and town lots with an occasional residence and an occasional small store that has been opened up since the mill was built. The streets are now opened out to the mill, and there are continuous town lots and streets between the business district and the mill.

Witness admits that Mr. Glines is personally obligated on the note for the purchase price of the above purchase, and he is, and at all times referred to, has been financially responsible.

REDIRECT EXAMINATION

“Q. You have always been rather optimistic, haven't you?

MR. PETERS: I object to that.

Q. Would you be willing to do anything to help your town along, that you could, even now?

A. We have always tried to.

Q. Done all that you could to boost it and help it along?

A. Yes sir, a little in excess of good judgment, I guess.

Q. (Mr. Earle) You are doing all you can to help the town along now, aren't you?

A. Yes sir.

Q. (Mr. Riddell) Does that influence you to change your testimony?

A. No, sir.

(Witness excused.)”

CLIFFORD L. BABCOCK, sworn as a witness for the defense, testified as follows:

DIRECT EXAMINATION

Witness has been a resident of Port Angeles for twenty-six years. At present time is connected with the Port Angeles Trust and Savings Bank; was County Treasurer from January, 1911, to January, 1915; Republican in politics; knows John Hallahan, the as-

essor, who ran for office at the same time the witness did. They didn't make their campaign together. Has been active in Clallam County politics twenty-six years. Witness has been active enough politically so that he has been in touch with the political rumors and political activities of the political parties in Clallam County during that time. Whatever activities were going on in the Republican party locally he would know about.

Witness has no knowledge and has never heard of any conspiracy, confederation, understanding, agreement, or concerted action of any kind between the assessing and equalizing officers of Clallam County themselves or between them and any other persons to discriminate against Ruddock & McCarthy, or the Clallam Lumber Company, or any other timber owners in Clallam County for the years 1912, 1913 and 1914. That no such conspiracy as that has been entered into.

Witness did not make campaign on the issue of taxing the timber owners. Witness' interest in local politics is such that he would have known of the existence of such agreement, or such rumor, if there had been such.

Witness remembers a man by the name of E. H. Grasty. The first occasion he saw him was when Mr. Philips, the cashier of the bank of which Mr. Babcock was stockholder and vice-president, called Mr. Babcock over the 'phone, and asked him to come down to the bank and meet a gentleman from Portland. Witness' best recollection is that it was under such circumstances that Mr. Philips introduced witness to Mr. Grasty. Being requested to go on and state from that time on what his experiences with Mr. Grasty were witness answered as follows:

"A. Yes, sir; I cannot state in the exact words, perhaps, the entire conversations at different periods in connection with Mr. Grasty, but the substance of his talk and conversation was that he came down there for the express purpose of making a loan to the Elks Lodge.

Q. Are you an Elk?

A. I am. I will state that I am an enthusiastic member of the lodge and was very anxious to secure a home, a building for the lodge, and we realized that we had a splendid site, which was practically paid for, and we were, all of us, willing to use every effort and strain every point for the purpose of constructing a building that would be a credit to the town, and benefit to the lodge. With that end in view every one that indicated his desire or willingness, or made the least intimation to us that he could furnish money was received with open arms, and we put ourselves out to make it pleasant for him, and secure, if possible, a loan. Mr. Grasty stated that he came down there for that purpose, to make a loan to the Elks Lodge, and desired certain information. And during his different visits and the different committee meetings that he had with the committee, which I attended,—In fact, I will state that I was very instrumental in getting the committee of the Elks Lodge, the building committee at the time, to go to meet Mr. Grasty.

Q. Let me ask you if this matter of securing this loan from Mr. Grasty, or anybody else that you could get it from, was made a lodge feature?

A. Yes, sir.

Q. The whole lodge was working on it, were interested in it?

A. Casually; but in a large body of men that way there is always a few to do the work. I think I was at that point—

Q. You said that he desired certain information—

A. Yes, sir, that he desired certain information from the lodge committee and from the citizens of Port Angeles that would aid him in furnishing this money to the lodge; and I believe that we asked for forty thousand dollars at that time. He stated to the committee and stated to me that the assessed valuation of that property was low and it would be necessary for him to have representations to the people who were to furnish the money, showing that the property was under assessed, or he would be unable to supply

us with the money required. I used every effort that I could to get such representations from the members of the lodge that would enable him to satisfy the people that were going to put up the money.

Q. Let me ask you, at that point you put high valuations on property, didn't you?

A. We did.

Q. Let me ask you what were the considerations with reference to the use which was to be made of that money which justified you in putting valuations upon the property, what was the money to be used for?

A. That seems to me like a large question that cannot be answered except the last part of it.

Q. What was the money to be used for?

A. The construction of an Elks Lodge.

Q. Upon the same property that you put the valuations on?

A. Yes sir.

Q. The money then went right back into the property?

A. It did.

Q. It was not to be used for any other purpose?

A. It was not.

Q. Was that fact an influence in justifying you in putting valuations upon that property that you did put upon it?

MR. PETERS: I object to that as leading.

THE COURT: The objection is sustained.

MR. EWING: Note an exception.

THE COURT: Exception allowed.

Q. To what extent did such consideration influence you in putting your valuations upon the building,—I mean upon the lots?

A. Well, very largely. I will say in connection with that, that we were willing to go to most any extent with this man Grasty, because he had gained our confidence in relation to what was absolutely necessary. We believed, that if we could so represent to him, that he had clients that would furnish us with the money, and I felt satisfied, and do today, that had he lived up to his agreements with us and furnished

the money, that the money would have all been paid back, and nobody would have lost a cent in connection with it. I will say that we are about to construct a building at the present time. The contract was let yesterday."

Witness says that there are four hundred and forty members in his Elks Lodge. The members are very active.

"Q. And in conferences that the Elks committee had with Mr. Grasty, I want to ask you who led the conversation with reference to comparisons of assessed and actual values of property?"

A. Mr. Grasty.

Q. Can you illustrate how he did that, just give a general idea of the conversations with him?"

A. My recollection is, that every one that came in, and every conversation that was had with him that at all times he wanted to know why the assessed valuation was so low. It was almost impossible, he said, for him to get the money with the assessed valuations so low. I did not understand why he wanted the valuations raised, except that he represented that it was necessary for him to show to his people a large valuation, or he could not get the money."

Mr. Grasty attempted to direct the estimate of valuations upward. Witness recalls giving Grasty a letter as to comparison of the assessed and actual values of property in Port Angeles, and is shown plaintiff's exhibit "M," which he recognizes as such letter. The letter was handed to Mr. Grasty on his second visit to Port Angeles. Mr. Grasty told me just what he wanted the letter to contain, said that he wanted me to state in the letter that the property was assessed lower than the true value; he suggested 10% lower. Witness furnished him the letter "M".

Q. How far were you influenced in writing that letter by the suggestions that he had made as to the contents he desired to have you put in it?"

"A. Mr. Grasty did not dictate this letter, but it was written and the entire contents, almost entirely,

as suggested by Mr. Grasty, as suggested and requested.

Q. Mr. Grasty testified as follows: "Q. Was there any reference made to the method of assessing the timber lands in that county by Mr. Babcock? A. Not at that interview. There was no reference made to that, except on one morning when Mr. King was with me, Mr. Babcock very kindly took Mr. King and I for an auto ride, showing us the territory adjacent to Port Angeles, that is, the logged off land, and some of the farming country, the Elwah River, and some scenery, and he drove us over the city in a brief way. And on this trip I remarked to Mr. King—— Q. Was that in the hearing of Mr. Babcock? A. Yes, sir, I remarked to Mr. King that if Oregon had the roads that Clallam County had, they could be very proud of them. Mr. Babcock replied by saying, "that Clallam County has a great deal of wealth, and especially in its timber, and the taxes against timber here is very high." He said, "These roads will be built out of the funds that we derive from taxing the timber people." And I remarked, after he got through, "Yes, I so understood from Mr. Keeler of Sequim." I represented that Mr. Keeler had informed me that the reason the people in Clallam County had voted to build such fine roads was on the strength of being assured that the timber owners in the Western part of the State would be taxed sufficiently to pay for these roads, and that it would not come out of the pockets of the local people." Q. Was that statement made to Mr. Babcock? A. That statement was made to Mr. Babcock and Mr. King. In other words, I simply referred to that on account of Mr. Babcock referring to their plans with regard to building the roads, and how easily the timber, (improvement) bonds were voted to make those improvements. Q. Did Mr. Babcock assent to that, or dispute it? A. He did not dispute it." Q. (To Mr. Babcock): Did the fact that you did not dispute a statement of that sort mean that you acquiesced in it?

MR. PETERS: I object to that as immaterial and irrelevant.

Q. Do you recall that incident that Mr. Grasty testified about?

A. A part of it, yes, sir.

Q. Give your own version of it, but particularly with reference to what was said about the timber valuations and taxation?

A. In showing Mr. Grasty and Mr. King over the town I was anxious, of course, to make as good an impression of Clallam County as I possibly could, of our fine roads and townsite. I was very optimistic, and still am, with relation to Port Angeles, and I presume, in fact I know, that I did state that our roads would be paid for by the taxes on the timber. I think that I stated to him at that time that timber in Clallam County paid at least eighty per cent of the taxes, and that the roads therefore largely come out of the taxes on timber, but I did not state that the timber was taxed very high.

Q. Was there any intimation in anything that you said to Mr. Grasty in that regard that should have reasonably led him to believe that you referred to a dishonest or unfair discrimination against the timber men in the matter of taxes?

MR. PETERS: I object to that as leading.

THE COURT: Objection overruled.

Q. What, if any, intimation did you give to Mr. Grasty in your conversation with him on that occasion with reference to any supposed discrimination against the timber owners of Clallam County in the matter of taxation?

A. I did not give any at that time, nor any time.

Q. What are the facts in that regard, what are the actual facts? I am not referring to the conversations, but what are the facts with reference to discrimination being practiced against the timber men in Clallam County in the matter of taxation and assessment?

A. There were none. Let me qualify that. There is none against the large log timber holders. I be-

lieve now, as I have always believed, as I said at the Board of Equalization, that the small individual holders were assessed too high.

Q. Why?

A. Because it was impossible for them to log, or get any money out of their property in a small way.

Q. Because of the smallness of their holdings?

A. Because of the smallness of their holdings and the isolated condition.

Q. Notwithstanding your own attitude on the Board in that matter, what are the facts with reference to the assessment being the same?

A. The assessment is the same.

Q. And has the Board of Equalization ever reduced the taxes on the small timber men on the consideration that you suggested?

A. They have not, and refused to against my wishes."

"Q. Now, in testifying further, Mr. Grasty said this: "Q. By the way, did Mr. Babcock know at this time that you were inquiring for the purpose of finding the discrepancy between—what you took to be discrepancies, between the supposed market value of real estate down there and the assessed value? A. Yes, sir, he understood that I was trying to ferret out the true status of affairs regarding property values, and he was assisting me along those lines, and explained to me the difference, the discrepancy." Did you know that Mr. Grasty was trying to ferret out the true state of facts?

A. No, I did not.

Q. Did you find it out afterwards?

A. I did not find it out until last Saturday in the court.

Q. You did not know he was ferreting until then?

A. I did not.

Q. (Reading) "Q. (The Court) In this remark you made to him, you simply said he did not deny it?

A. Mr. Babcock did not deny that statement. Q.

When you told him what the man at Sequim had told you? A. Yes, sir."

WITNESS: I should say to the Court that possibly I was driving the car, and there might have been some of this that I did not hear. Mr. Grasty sat on the back seat, and Mr. King sat in front of me. I do not remember any such conversation.

Q. Did you ever, either by express assent in words, or silent assent by not answering, intend to convey to Mr. Grasty, any information that there was unjust discrimination against the timber men in Clallam County on the score of the assessment and taxation of their property?

MR. PETERS: I object to that as leading, what his intentions were.

THE COURT: Since he says he did not hear the conversation he could not have got any intention about discrimination, or affirmation, or any other intention. It would be much clearer, though, if he would state how much of that conversation, if any, he did hear.

Q. Well, state that, Mr. Babcock?

A. I do not remember particularly what Mr. Grasty said at that conversation. Most all the conversation was between Mr. King and I, and that was in relation to the county roads and the conditions of them, and the townsite; and we drove by the Elks' property and showed them over the town, and a view of the city.

Q. (The Court) What I was speaking of is, how much of this conversation in which Mr. Grasty told Mr. King what this man in Sequim had told him about what the plans were; you need not tell about the other?

Q. (Mr. Ewing) How much of that did you hear?

A. I do not believe I could say.

Q. Do you recall Mr. Grasty trying to induce you to get from Mr. Hallahan, the assessor, a letter similar to the one that he obtained from you?

A. I do.

Q. State your version of that?

A. He asked me to do so.

Q. What did he ask you to do?

A. He said that he wanted a letter from the assessor stating why he had under-assessed, or placed a low valuation on some of this town property, and said that he wanted to have something from the assessor in order to show the people why this property was not assessed at its full and true value. I told him I would speak to Mr. Hallahan in regard to it, and I did not do so.

MR. PETERS: I did not catch that.

A. I did not do so.

Q. I understood you to say that you told him something?

A. I told him I would speak to Mr. Hallahan.

Q. (Mr. Ewing) To what extent did Mr. Grasty indicate in making that request of you the contents of the letter that he desired to have you obtain from Mr. Hallahan?

A. It was to be a similar letter to the one that I had written to him.

Q. To what extent did he make reference in his request to the matter of the difference between the assessed and the actual values of property?

A. Less than half.

Q. Do you mean that——

MR. PETERS: Now, don't lead him. I am perfectly willing to have him tell you everything that Mr. Grasty said, and everything that he said. I don't want the suggestions.

THE COURT: The objection is sustained. He can explain what he means."

CROSS EXAMINATION BY PLAINTIFF.

Witness was county treasurer for four years, and during that period was a member of the Board of Equalization. The Board of County Commissioners has charge of the assessment work for 1912, was composed of Mr. Hanson, Mr. Erickson, and Frank Lotzgesell, and ex-officio of the witness as treasurer, and of the assessor, John Hallahan. Mr. Hansen came from Port Angeles, residing there, and had property

there; Mr. Lotzgesell came from Dungeness, fourteen miles east of Port Angeles, and had property there. Mr. Erickson came from the west end of Clallam County, and had property in Port Angeles; ran a little store down at Mori, a post office in the west end of the county. In 1914, the Board was composed of Mr. Hansen, Mr. James Clark, and Mr. Lotzgesell. Mr. Clark lived in the western part of the county.

Witness has been vice president of the Port Angeles Trust and Savings Bank since about the 20th of February, 1914. The company was in existence the 1st of March, 1914, doing business. The capital stock was \$25000, all paid in. He does not remember what the bank stock was assessed for in 1914. Admits it might have been assessed for \$2000. Admits he sat upon the Board of Equalization that passed upon that assessment. Mr. Philips, who introduced Mr. Grasty, was not an Elk. Mr. Grasty had told witness that he had clients who could make the loan on the Elks building; said there had been application made to him for this loan. Witness, as local Elk, knew they wanted to borrow \$40,000 on the property to build a building. Mr. Hansen, Mr. Trumbull, Mr. Elliott, and Mr. Fisher, were on a committee of the Elks to negotiate this loan with Mr. Grasty. Witness knew that it was not Grasty's money that was going into the loan, but Grasty was going to get somebody else to put their money into the loan.

“Q. And he stated to you that he thought that the assessments appeared, the property appeared to be assessed very low, as compared with the valuations that were given him by the Elks and other people of that and other property in Port Angeles?”

A. Words to that effect, yes, sir.

Q. That is the very way the matter arose, isn't it?

A. I think so.

Q. That is all you were talking about?

A. The Elks loan.

Q. What he was talking to you about—there

wasn't any question in your mind at that time but what you wanted \$40,000?

A. None whatever.

Q. And he told you that he had a client that had \$40,000?

A. Yes, sir.

Q. Was willing to put it in a building on the property?

A. Yes, sir.

Q. Then the only question left was whether the valuation of the property would justify the loan, wasn't that it?

A. Yes, sir.

Q. That was the whole thing that was discussed between you all, whether the fair valuation of the property would justify the loan of his client's money of forty thousand dollars?

A. That is what he represented.

Q. And that is what you believed?

A. I did not.

Q. What did you think?

A. I believed that if a building was put back into the property that it was ample to secure the loan, and he did not believe so.

Q. But what I mean is, that the whole matter under discussion was the value of the property for the purposes of the loan?

A. So he represented, yes.

Q. That is what you knew; that is what you were discussing?

A. Yes sir.

You had in mind then that some Portland people, through a man by the name of Grasty, were going to put forty thousand dollars into this building, and you thought then that the information was desired to satisfy those people who were going to put their money in, that there was that value there in the property?

A. Absolutely.

Q. That was it?

A. Yes, sir.

Q. And such information that you gave was in-

tended to advise those clients of his in Portland as to what your judgment was of the actual value of that property?

A. Upon his request and recommendations, yes, sir.

THE COURT: We will take a recess until 1;30 this afternoon.

September 10, 1915, 1;30 o'clock P. M. trial resumed pursuant to recess, all parties present.

Q. (Mr. Peters) Mr. Babcock, referring to this letter of April, 2, 1914, from yourself to Mr. Grasty, Plaintiffs' Exhibit "M". Where were you when you wrote this letter?

A. I think I was in the office of the Treasurer of Clallam County.

Q. Who else was in there?

A. I do not remember. I presume my deputies, Mr. Stegmiller and Mr. Keeley.

Q. What time of day did you write it?

A. I do not remember.

Q. It is dated the 29th day of April, 1914.

A. I do not remember.

Q. What time of day did you write it?

A. I do not remember.

Q. Was Mr. Grasty there at that time?

A. I don't think so.

Q. When did you deliver it to him?

A. I don't remember.

Q. How many days afterwards?

A. I don't remember.

Q. How many days, do you remember?

A. I think it was either the same day, or the next day probably. I don't know it was at any time.

Q. He wasn't there when you wrote the letter in your office?

A. I don't think so.

Q. Do you know whether it was during the time that he was in Port Angeles, that you wrote it?

A. I think so.

Q. How long after you had the conversation with him and promised to write, it, did you write it?

A. I think right off.

Q. You think it was right off?

A. I think so.

Q. Now you say in that letter "the people of Port Angeles have been afraid of high taxes and believed that if the valuation of former years was raised to anywhere near the true value of the property at the present time their taxes would increase in like manner and the assessor has been influenced by that attitude", was that true or was it false?

A. I think that was largely false. I do not believe that is true. It was true to this extent: that we had just had a flurry and a few lots had been sold extremely high, and I honestly believed at that time that those values were going to continue, perhaps.

Q. I am not asking you; perhaps you did not understand me.

A. I guess not.

Q. At the time that you made that statement on April 29, 1914, was it to your knowledge and conscience true or false?

A. The exact words of that letter—I did not just understand you.

Q. I refer you to one of the clauses in the letter. I will read it again, if you wish me to,—or would you prefer to read it,—(Handing witness letter) Just read that sentence out loud.

A. The second clause?

Q. Yes, sir, if you please.

A. "The people of Port Angeles have been afraid of high taxes and believe that if the valuation of former years was raised anywhere near the true value of property at the present time that their taxes would increase in like manner, and the assessor has been influenced by their attitude." I think that was true. I think I believed it was true.

Q. At the time?

A. At the time.

Q. As a matter of fact, then, you did believe on the 29th day of April, 1914, that the people of Port Angeles up to that time had been afraid of high taxes?

A. Yes, sir.

Q. And that they had up to that time believed that if the valuation of former years was raised to anywhere near the true value of property at that time, namely, April 29, 1914, that their taxes would increase in like manner and that the assessor had up to that time been influenced by their attitude, you believed that, did you?

A. I think so.

Q. And that was true, was it not, at that time?

A. I thought so, at that time.

Q. How did you think at that time that the assessor had been influenced?

A. I did not know.

Q. What effect did that have upon him, these facts you read about?

A. I presume to keep the valuations down.

Q. That is, that your view of it at that time was that these facts presented to the mind of the assessor had influenced him to keep the values in Port Angeles down?

A. Former assessors?

Q. Yes sir.

A. I think so, yes sir.

Q. You thought so then?

A. Yes, sir.

Q. You have since found that it was not true?

A. That what you stated in that way was not true?

Q. You haven't since found that it was not true?

A. That it was not true that the assessor was influenced by public opinion? What do you mean?

Q. That the assessor had been influenced by public opinion to keep the taxes down upon Port Angeles property?

A. I don't think so, now.

Q. You don't think so, now?

A. No.

Q. You have changed your mind since April 29, 1914?

A. Yes, sir.

Q. What has made you change your mind?

A. The assessment of 1914.

Q. The assessment of 1914 made you change your mind?

A. Yes, sir.

Q. How did the assessment of 1914 make you change your mind as to something that had already passed?

A. It had not passed. I had no knowledge of what the assessment of 1914 was on the 28th of April.

Q. You mean they changed the method of assessment, or rather, the basis of assessment in 1914?

A. I did not change it. The assessor changed it, and I had no knowledge of it at the time.

Q. But you did believe at that time, and still believe at this time, that up to the assessment of 1914, the assessor had been influenced by this public opinion that is referred to here?

A. Well, possibly, to a certain extent.

Q. And as you state in the letter?

A. Yes sir.

Q. Now then, you say: "As a matter of fact, nearly all the lots in Port Angeles are now upon the rolls at from ten to twenty per cent of their true value." Is that true, or is it false?

A. It is false.

Q. Was it true at the time you uttered it, or was it false?

A. It was false.

Q. Did you know that it was true at the time you uttered it, on the 29th of April, 1914, or did you know that it was false?

A. I did not believe that that was true.

Q. Then you knew it was false?

A. Yes, sir.

Q. And you further say; "And consequently the tax levy is very high, nearly to the limit in every taxing district." Was that true, or was it false?

A. In the County?

Q. No, you say in Port Angeles.

A. That was true.

Q. That was true?

A. Yes sir.

Q. That the tax levy is very high, and nearly to the limit in every taxing district?

A. In the city.

Q. You mean to imply that your view of the situation was that the tax levy was as high as it could be?

A. Yes, sir.

Q. Then you further say: "Out of town investors are appalled at our high levy, but, if the valuations were raised to somewheres near their true value, and the levy reduced in accordance, I think, am sure, our taxes would not look so high, and would compare very favorably with other towns of like population of Port Angeles"; now then, did you believe that the taxes were below, that the assessments were below their true value?

A. Yes, sir.

Q. You believed that the assessments then, were below their true value?

A. Yes, sir.

Q. In 1913?

A. Yes, sir.

Q. And that if they were raised to anywhere near their true value that the people would be appalled at the levy?

A. If the levy was kept the same.

Q. If the levy was kept the same?

A. Yes, sir, the taxes, certainly.

Q. You believed that however, to be the fact?

A. Yes, sir.

Q. "That the valuations were below their true value", that the assessed valuations then were below their true value?

A. Yes, sir.

Q. What do you conceive to be the true value?

A. Well, more than the assessed valuation; of course, much of the property, a great deal more; much property was a great deal more than its assessed valuation.

Q. Much property was worth a great deal more than its assessed valuation at that time?

A. Yes, sir.

Q. And you have said that the assessments were not as low as from ten to twenty per cent of the true valuation of property in Port Angeles?

A. Yes, sir, I believe so.

Q. Now, if they were not as low as ten to twenty per cent, what were they?

A. I think they were somewhere in the neighborhood of fifty per cent of their value.

Q. You think they were in the neighborhood of fifty per cent of their value?

A. From forty to fifty.

Q. When did you discover that?

A. I felt that all the time. I think I did not tell the truth when I said it was ten to twenty. I was writing that letter for a purpose.

Q. In other words, knowing at the time in your own conscience that the assessed valuation was fifty per cent of what you believed to be the true valuation, you falsely stated that it was but ten to twenty per cent of it?

A. I so stated in that letter.

Q. And you falsely so stated?

A. I so stated.

Q. Was it true, or was it false?

A. It was not true.

Q. Did Mr. Grasty ever give you any memoranda of anything he wanted you to put in the letter?

A. No, sir.

Q. He did not give you any memoranda to hand the assessor to put in the letter?

A. No, sir.

Q. Did you ever go to the assessor and ask him for a letter?

A. I did not.

Q. You said that you would.

A. Yes, sir.

Q. Was he an Elk?

A. No, sir.

Q. He could not get in?

A. He never tried, to my knowledge.

Q. You never went to him, for a letter?

A. I did not.

Q. Why didn't you?

A. Well, I did not feel like doing it. I did not wish to ask him for a letter of that kind.

Q. Why?

A. I did not believe he was sufficiently interested in the Elks Lodge to write a letter of that kind; I did not think he would do it.

Q. If you were asking him for a true statement of matters that he must know of within his official knowledge, there would be no embarrassment in requesting it, would there?

A. I think there would, in that case.

Q. Why?

A. Asking him to write something that pertained to his official knowledge, particularly with relation to his books and rolls that were being made up, might embarrass him. I understood that he had already been asked by Mr. Grasty.

Q. By whom?

A. By Mr. Grasty.

Q. Mr. Grasty told you he asked him?

A. Said he had asked him.

Q. And that he had refused to give it?

A. He did not get it. I do not remember whether he refused.

Q. Mr. Grasty told you when he asked you to get that letter for him, Mr. Grasty told you that Mr. Hallahan had made the same statement with reference to the assessed valuation and the true valuation that you made?

A. I won't say that.

Q. Why did he ask you to get the letter then?

A. Well, he said he wanted a letter of that kind, in order to get Mr. King and others in Portland to loan the money to the lodge.

Q. Did he tell you that Mr. Hallahan had made

such a statement to him but that he wanted the statement in a letter?

A. I don't think so.

Q. Refresh your recollection; don't you know that he did?

A. No.

Q. If he was dictating to you the kind of a letter that he was to get from you how was it that he was first asking you to get from Mr. Hallahan any kind of a letter about the assessment?

A. He wanted the same kind of a letter that he wanted me to write.

Q. And didn't he tell you that he had already talked with Mr. Hallahan and that Mr. Hallahan had given him that same statement but that he wanted it in writing?

A. I do not think so. He told me that he had talked with Mr. Hallahan, and had been in there several times, but that he wanted a letter; that it was necessary for him to have a letter.

Q. And what did he tell you that Mr. Hallahan told him in this talk about this matter that he wanted in the letter?

A. I do not think that he told me. I do not remember that he told me anything about it.

Q. You were on the Board, I think you said, in 1913, as well as 1914?

A. Yes, sir.

Q. On the Board of Equalization?

A. Yes, sir.

Q. What did you assess the property at, what date did you assess the Port Angeles property at in the rolls of 1912?

A. We did not assess the Port Angeles property at all.

Q. What did you equalize it at?

A. We did not have any tax rate.

Q. What did you pretend to equalize it at?

A. To have all the property as near alike, I suppose, regardless of percentage.

Q. What value did you place upon the proper-

ties for the purposes of equalization, fifty per cent of its value, or one hundred per cent of its value?

A. We did not have any occasion to place any valuation.

Q. You did not guage with reference to its actual value or fifty per cent of its value?

A. Only in comparison.

Q. Comparison with what?

A. Other property.

Q. Just other property?

A. Yes, sir.

Q. Then the Board of Equalization, in passing upon the roll of 1912, paid no attention to the assessed value of property in Port Angeles as to whether it was put down by the assessor at half its value or at one hundred per cent of its value?

A. No, sir.

MR. FROST: We object to this question for the reason that the Statutes of the State of Washington expressly provide that the County Board of Equalization shall have no power to either raise or lower the aggregate assessed value of property within the county and limits them to the sole duty of Equalizing the property as between individual property owners.

THE COURT: He may answer the question. Objection overruled.

MR. FROST: Note an exception.

THE COURT: Exception allowed.

A. That it what I said.

Q. (The Court) That is what you mean to say on what Mr. Frost said?

A. Words to that effect.

Q. Read the question. (Question read).

MR. PETERS: I think the answer to my question previous to that would be an answer to this question.

Q. Will you answer this question?

A. Yes, sir.

Q. Answer it then.

A. We did not.

Q. You did not what?

A. I simply say "no."

Q. That doesn't answer the question. Did you consider the property as assessed on the roll of 1912 when it was before you for equalization as on the basis of fifty per cent of its actual or market value, or as assessed at one hundred per cent of its market, or actual value?

A. Neither one.

Q. Neither one?

A. No, sir.

Q. You paid no attention to that standard?

A. No, sir.

Q. Is that true of the equalization of the rolls of 1914?

A. I think so.

Q. The same thing?

A. I think that held good during all of my official connection with the Board of Equalization.

Q. I refer you to your answer to section 13, with reference to paragraph 13 of said amended bill: "The defendants deny the practice of assessors and taxing Boards, of the custom therein referred to and deny the pursuit of such custom by County Assessors and its recognition and acquiescence by the State Board of Equalization." I will read you the custom that we have alleged there and to which you referred, the custom which was this; "It is, and has been during all the time in this bill alleged, the custom practiced throughout the State of Washington by Assessors and taxing Boards as assess property at less than its actual and full value, the custom being in the large part of the Counties in the State to assess said property at from thirty-five to fifty per cent of its true value." Do you mean to say in your answer there that it was not the custom of the Counties throughout the state of Washington to assess property at less than its actual and full value?

A. Do I mean to say that it was not the custom of Counties throughout the state of Washington to assess at less than its full value?

Q. Yes, sir.

A. I do not.

Q. What do you mean to say then?

A. I do not mean to say anything.

Q. I want you to say something, was it the custom of the counties throughout the state of Washington to assess properties for taxation at less than its fair value, or at its full value?

A. My opinion is that it was.

Q. Was what?

A. Was the custom of the county assessors throughout the State of Washington to assess the property at less than its full value.

Q. What was the custom of counties through the State of Washington to assess, at what proportion of its value?

A. I would have to refer to the reports of the State Board of tax commissioners.

Q. What is your best judgment?

A. The Counties range, I think from about thirty-seven to sixty per cent. It varied in different counties and in different years.

Q. What was the custom in Clallam County?

A. If my memory is correct I think we got a rating from the State Tax Board of fifty-seven per cent.

Q. That is, that you were accustomed to assess property in Clallam County at fifty-seven per cent of its value?

MR. FROST: Fifty-two.

A. I was not sure. I stated that as figures—

MR. FROST: I think you set that up in your complaint as fifty-two per cent, but they denied it.

MR. PETERS: Q. Then it was the custom of Clallam County for 1912, and prior, to assess property at fifty-two per cent of its value?

A. Are you asking for my opinion, or the opinion of the State Board of Tax Commissioners as found from a comparison of the assessments from the different assessors of the State of Washington?

Q. I am asking from your knowledge from any source as to what was the custom in Clallam County?

A. That is pretty hard to say; I can't say what was the custom.

Q. You can't say then?

A. No.

Q. I will continue this paragraph 13 of the answer: "and deny the pursuit of such custom by County Assessors and its recognition and deny that the assessor of Clallam County gives out and pretends that for the year 1913 he assessed taxable property within Clallam County upon the basis of fifty per cent of its true and fair value in money or upon any other or different basis than that provided by the laws of the State of Washington at the time that the assessment for the years 1912 and 1913 were made." Now, then, what did you mean by that answer; what did you mean to say, that it was given out by the County Assessor to be the custom of Clallam County with respect to the rate at which property was assessed?

A. I did not make that answer.

Q. What is that?

A. I did not make that answer.

Q. You swore to it?

A. I swore to that answer?

Q. Yes, sir; at least, I presume so; you are one of the defendants?

MR. EWING: The answer under oath was expressly waived in the bill, and he did not.

Q. (Mr. Peters) "Clifford L. Babcock," is that his name?

MR. EWING: Yes, sir.

MR. PETERS: Then somebody else must have forged his name.

Q. Assuming that that is your name appended to that, was that true, or not; was it true or not true?

A. My signature true, or not true?

Q. Did you sign it?

A. I would have to see it.

Q. What was the custom as announced or followed by the Assessor of Clallam County with reference to the rate at which property was assessed in 1912?

MR. EWING: This is not the assessor. We object to that. He does not know.

THE COURT: The objection is overruled.

MR. EWING: Note an exception.

THE COURT: Exception allowed. He may know.

Q. (Mr. Peters) Do you know?

A. I do not.

Q. You don't know at what rate the assessor intended, or purported to assess property in 1912?

A. No, I do not.

Q. And you did not know at the time you equalized the taxes in 1912, or 1914?

A. No, sir.

Q. Was there any discussion before the Board as to the rate adopted, or the rate that should be adopted?

A. No, sir.

Q. Was there any discussion before the Board as to the rate that the Assessor had adopted, or should adopt?

A. No, sir.

Q. Now, you say here in this answer that the basis that you did adopt was that provided by the Laws of the State of Washington at the time the assessment for the year 1912 and 1913 were made; in your official capacity you were bound to know and to carry out the laws, of course. What did the law provide in respect to the manner of assessment at that time?

A. Prior to 1914?

Q. Yes, sir.

A. It provided that it should be assessed at its full and fair value.

Q. What?

A. The law provided that it should be assessed at its full and fair value.

Q. And you intended to assess it at its full and fair value?

A. I did not have anything to do with the fair value.

Q. Did you intend to equalize the property as assessed at its full and fair value?

A. I did not.

Q. Why?

A. How could the Board of Equalization raise it, providing the assessment was too low?

Q. I am asking you whether it was your understanding at the time the rolls were before you as one of the Board to equalize that the assessment had been made on the basis of one hundred per cent of the value of the property or made on the basis of fifty per cent or any other per cent of its value?

MR. EWING: The Board of Equalization does not fix the rate. They equalize, is all.

THE COURT: He is asking what his understanding was of what rate was assessed.

WITNESS: I can answer that.

Q. (Mr. Peters) Answer it.

A. No, I did not.

Q. You did not know?

A. No, sir; that question never came up before the Board of Equalization.

Q. You say here, you admit that the interior timber lands in said County, including the lands owned by the plaintiffs, were, and are, valued in the year 1913 for the purpose of taxation at sums in excess of fifty-three per cent of the true and fair value thereof in money," is that true?

MR. RIDDELL: Mr. Babcock did not make that answer.

MR. PETERS: He signed it and did not object to it.

MR. RIDDELL: Mr. Ewing signed it.

Q. (Mr. Peters) Is that true?

WITNESS: Please read the question.

Q. "Admit that the interior timber lands in said County, including the lands owned by plaintiffs were, and are, valued in the year 1913 for the purpose of taxation at sums in excess of fifty-three per cent of the true and fair value thereof in money"?

A. I think that is true.

Q. Then at what rate were they valued?

A. I do not know.

Q. How do you know that they were valued at fifty-three per cent when you made that answer, when you say you don't know at what rate?

A. I said I think they were more than fifty-three per cent.

Q. At what per cent do you think they were valued?

A. I do not know.

Q. What per cent did you have in mind when you took up our bill of complaint, when you say, "We charge, you assessed us more than fifty-three per cent," what did you have in mind,—you didn't assess at that,—when you say you didn't assess at more than fifty-three per cent?

A. I don't know that.

Q. Did you have anything in your mind?

A. Nothing in regard to that.

Q. You answered it absolutely reckless?

A. No, sir, I did not answer that.

Q. This is not your answer then?

A. I did not make any answer to that.

Q. You made no answer here?

A. No, sir.

Q. You don't claim any answer here?

A. No, sir.

Q. Personally?

A. No, sir.

MR. PETERS: Then we ask judgment against this defendant at this time and insist on that.

THE COURT: It is denied. It is apparent that the witness is one of the defendants, that the law is that it should be the true value. He might very well sign an answer that it was assessed at more than fifty-two per cent, and he would think it was on his side.

Q. Did you think at the time you signed this answer that the assessor was bound to assess property at one hundred per cent of its true value and therefore you assumed that it had been assessed at one hundred per cent of its true value?

A. I knew what the law was in relation to making assessments.

Q. What did you understand the law to be?

A. I stated before.

Q. That it should be assessed at one hundred per cent?

A. It should be assessed at its full value.

Q. And you assumed at the time you equalized that property, or sat on the Board to equalize it that the property had all been assessed on the basis of one hundred per cent of its value?

A. I do not know that I did.

Q. And you do not know that you didn't?

A. Not very well. We did not have anything to do with the percentage there.

Q. You just then adopted the assessment roll?

A. We compared property.

Q. With what?

A. With other property.

Q. What property did you compare?

A. We went over the assessment roll personal and real.

Q. You went over the assessment roll personal and real?

A. Yes, sir.

Q. When you went over the assessment roll what did you do, just take any piece of property and tell what you did about that?

A. I don't remember.

Q. Suppose you take lot 13 in block 19—I don't know—only consists of Smith's Addition,—and you found it in the book assessed at a certain value, what did you do about it?

A. We looked to see how surrounding property was assessed; if it was assessed at an equal value in our opinion we left it alone.

Q. If that particular lot 13, block 19 had been assessed at fifty thousand dollars, or had been assessed at five thousand dollars, so long as the next block to it, or the block in its neighborhood was assessed at

the same proportionate value you paid no attention to it?

A. If, in my opinion, the surroundings, and my knowledge—I have lived in the town a good many years, and knew something personally about the values of land and lots, and property, and I used that to base my judgment on.

Q. Then you did base your judgment in equalizing that roll on the actual value of land proportionate to the assessment?

A. Compared to other property.

Q. To other lands?

A. Yes, sir, to other lands.

Q. Did you make any comparison between the value put upon it by the assessor and in your judgment the actual value of it?

A. No, sir.

Q. You did not?

A. No; only as it was compared with other lots and other similar property."

The Board of Equalization made no substantial changes in the roll as handed it by the assessor, or the roll of 1914. They made no changes respecting the timber lands of the plaintiff in either roll.

Q. Now you stated, Mr. Babcock, that you always had maintained that timber property in an isolated tract in small area timber property ought not to be assessed as high as it was the custom of the assessor of Clallam County to put it.

A. I do not think I made that statement.

Q. Then what statement substantially did you make along that line?

A. That it should not be assessed as high as larger bodies of timber lands; timber sufficient to constitute a logging proposition.

Q. So that if a man had one hundred and sixty acres in your judgment it ought not to be assessed as high proportionately as one who had sixteen hundred acres, is that it?

A. Practically so, yes, sir.

Q. For what reason?

A. For the reason I have stated, that one cannot be logged without the other, that the large tract of timber can be made a profitable logging proposition, and a man that had one hundred and sixty acres down in the West end of this County and that one is unable to do anything with his timber, to market it or sell it or do anything with it at all. He is tied up and hemmed in by speculators and large timber owners, and he cannot get out and some of them with an acre or two of land cleared trying to make a living cannot raise a sufficient amount of produce on one of these little clearings to pay his taxes, when it is assessed at the same value of the large timber owners.

Q. Suppose one of the large timber owners stationed some fellow to make a living on that land who had one hundred and sixty acres down there where these plaintiffs have their land instead of forty-one thousand acres that they have, what would you say should be the rate of taxation on that timber land as compared with the taxation on the forty-one thousand acres?

A. I think it would be entitled to the same consideration.

Q. What consideration?

A. That it should be lower.

Q. What rate, for instance?

MR. EWING: That is objected to, the proof already in shows that there was no discrimination.

THE COURT: The objection is sustained. It is not a matter of rate, it is a matter of valuation. The record shows that the valuation was uniform on both the large and small holdings.

Q. What did the other Commissioners answer to you when you made that argument?

MR. EWING: I object to that as being incompetent, immaterial and irrelevant.

THE COURT: This is a matter of fraud; anything that was said would be competent.

MR. EWING: On that phase of it we withdraw the objection.

Q. (Mr. Peters) That is the only phase I put it on; what did they say to you?

A. They thought it was impossible to make the discrimination, and that it all ought to be assessed alike, and we could not discriminate between the small holder with the isolated tract and the large tract. If I may go a little bit further in explanation of this matter, I will say that we took it up with the State Board of Tax Commissioners and we got a reply from the State Board in which they bore out my contention, and held that an isolated tract was not as valuable and could be placed at a lower valuation for assessment purposes than the large tracts, but in the face of the opinion of the Prosecuting Attorney of Clallam County, and that opinion was asked by the Board of Equalization, the Board decided that it would have to all be assessed alike.

Q. This answer to you, or the advice of the State Board of Tax Commissioners, was submitted to the Board?

A. Yes, sir.

Q. In support of your argument?

A. Yes, sir.

Q. And in spite of that they made no change, after consulting the Prosecuting Attorney?

A. They made no change after consulting the Prosecuting Attorney.

Q. Now you say on Page 8 of your answer, towards the end of paragraph 14: "Deny that said assessment for the year 1913 was made upon the basis of 83½%, or upon any other, or different basis than the true and fair value in money of all the property assessed". Then it was your understanding after all that it was assessed at its full, true and fair value, wasn't it?

A. My understanding that the property was assessed, no sir, never.

Q. Then why did you put it in here that "you deny that it was assessed at 83½%, "the timber lands," or, "upon any other or different basis than the true and fair value in money of all the property assessed."

In other words, you said here, as I read it, that our property was not assessed at 83½%, but was assessed like all other property in Clallam County, at its full value, was that what you intended to say?

A. I think that it was all assessed alike. I do not know what the percentage was it was assessed at I do not know now, and never did know.

Q. And never did take that into consideration with the Board of Equalization?

A. No sir.

Q. And the Board did not take that into consideration?

A. Not to my knowledge.

Q. Again, In Section 18 of your answer you say: "Deny that the land and other properties situated at Port Angeles, and subject to taxation, and available upon the assessment roll, is equalized for such years, at not to exceed ten to twenty per cent of their true and fair valuation in money." Could you state then what you had in mind at that time as the rate at which they were assessed.

MR. EWING: I object to that because it is manifestly unfair.

THE COURT: The objection is sustained.

MR. PETERS: Note an exception.

THE COURT: Exception allowed.

MR. EWING: I think an explanation is proper at this point. These bills were objected to on a motion to dismiss, and, if I do say it myself, they are not properly drawn. They contain a lot of improper and irrelevant matter, and that was gone into before Judge Neterer, and he admitted that same thing, but he compelled us to answer categorically every one of these statements on a motion that they made to make more definite and certain. The bills are awkwardly drawn, and the answers are awkwardly drawn. It is because of the fact that the court required us to answer specifically the allegations of the bill. It is manifestly unfair to put a witness on the stand and question him as to why these answers are drawn, particularly in the case that has been called to Your Honors

attention. They say,—they leave a range for the answer of the difference between, ten, twenty, or one hundred per cent. We are not required to select any per cent on what the valuation was made at, or what the equalization was made at. The question is unfair.

MR. PETERS: When the bills were drawn they were attacked by the defense, in the only manner in which they can be, under the modern rules of equity by bill to dismiss, which was a demurrer. They went over it, and Judge Neterer went over them with a fine-tooth comb, and he sustained those bills, and these people were required to answer, and they came in and answered in the same manner that they would in the State Court to a Bill of Complaint, and we submitted to Judge Neterer that in a Court of Equity, the defendant was put upon his conscience, that in answering the bill he was in the situation practically as the witness upon the stand, and must answer categorically; that he is put upon his conscience; and Judge Neterer so held, and he defined the character of the answer, and he required them to go back and answer in full, and they did go back and answer in full. Is it possible that I can't attack those answers? That is the very reason of a suit in equity in a Federal Court.

THE COURT: You can attack those answers. But this witness has answered a number of times that he did not consider, and did not know about any percentage of the values used by the assessor, and he has not been qualified in anywise as a witness to express an opinion on the values; so I sustain the objection.

MR. PETERS: Note an exception.

THE COURT: Exception allowed.

MR. PETERS: We are charged with unfairness in representing the case. I wanted to answer that."

Upon further cross examination the witness states that he thinks the assessment on timber lands was raised in 1914 some fourteen per cent. above the assessment of 1912; that he wouldn't be sure about the figures exactly but the assessment was raised a little.

On re-direct examination witness admits that the assessment on Port Angeles property in 1914 was just double that of 1912.

(Witness excused.)

JOHN HALLAHAN, a witness sworn on behalf of the defendants, testified as follows:

DIRECT EXAMINATION.

Has resided in Port Angeles for about twenty-five years. Held the office of City Councilman for about ten years; was Deputy County Assessor from 1909 to 1910, and County Assessor during the years 1911 to 1914, inclusive. He is a democrat. He knows Mr. Hansen, Mr. Babcock, Mr. Lotzgesell and Mr. Erickson. They all made their political campaign alone. They are all republicans. Witness had no working agreement with them.

Witness is asked—

Q. Do you have any knowledge or have you ever heard, of any conspiracy, confederation, understanding, or agreement, concerted action of any kind between the assessing and equalizing officers of Clallam County themselves, or between them and any other person to discriminate against Ruddock and McCarty and the Clallam Lumber Company, or any other timber owners in Clallam County or in favor of any persons or corporations in the matter of the assessment and equalization of taxes of Clallam County for the years 1912, 1913, and 1914?

A. In speaking for myself I would say without equivocation that there was no understanding, no collusion, nothing of that kind, between myself and the other members of the Board of equalization. We were absolutely apart in making my assessment.

Q. Did you ever hear of any such combination as I have referred to in the previous question among any of the other officers?

A. I have never heard of any. If there was, they would show at the Board of Equalization meetings.

Q. You think from your position and residence

in that County the knowledge of such combination would come to you, if any existed?

A. I would be very apt to hear about it.

Q. Do you believe that any such combination or conspiracy ever existed?

MR. PETERS: I object to that.

THE COURT: Objection sustained. Exception allowed.

Q. You heard a part of Mr. Grasty's testimony, did you?

A. Yes, sir.

Q. And you afterwards read over a transcript of it?

A. Yes, sir.

Q. Reverting to the previous question, I ask you to state whether or not from any facts within your knowledge you can state that any such conspiracy as that that I alluded to did exist?

A. There was no such conspiracy that I know of, heard of, or believe to exist.

Q. With reference to the testimony of Mr. Grasty, you have read a transcript of his testimony?

A. Yes, sir.

Q. State now, in your own way the experience that you had with Mr. Grasty and what passed between you, the conversations, the object that he had in his conversations with you and all about it.

A. It would be very hard for me at this time to remember everything that was said between myself and Mr. Grasty at the time he mentioned. I was busy at the time.

Q. Where was that?

A. That was in Port Angeles, at my office.

Q. Go ahead.

A. I can't remember the date nor the month that he paid the visit to my office in the forenoon. He handed me his business card and told me that he represented capitalists in Portland, Oregon, and had come down to Port Angeles with the intention and expectation of loaning money to the Elk's Lodge, some forty thousand dollars, to erect a building. He talked along

a little while, and said further, that there appeared to be a vast difference between the assessed value of the property which belonged to the Elk's Lodge and the value placed thereon by the committee of the Lodge.

THE COURT: By whom?

A. The Lodge Committee. I believe he had an appraisal made by that committee, what purported to be an appraisal made by the committee, in his possession; I don't remember, but I believe he had; and he also, either at that time or at a subsequent time, had an appraisal made by Mr. Lutz, the cashier of the Clallam County Bank, and, I believe, Mr. Christensen, of the Citizens National Bank, at that time, which showed a lower appraisal of the same property.

Q. A lower appraisal?

A. A lower appraisal than that placed thereon by the Elks' Committee. On the same property the bankers placed a lower appraisal. Mr. Grasty seemed to be very enthusiastic about the placing of this loan, and discussed the assessments with me. He inferred that the assessments were very low as compared with the appraisal and that it would be very hard for him to explain to his people down in Portland the difference which appeared to exist, and suggested that I write a letter explaining the situation and send it to Portland, Oregon, to his address. He did not want the letter there at all, although he said, in his testimony the other day, that I promised to hand it to him in the afternoon. He did not want the letter; he wanted it sent to Portland to his own address.

Q. Did he say that to you?

A. Sure, he said that to me. That made me suspicious then. I says, "What kind of a concern do you represent that they have not your confidence?" I says, "You could not work for me but a short time if I had only that much confidence in you." And I got suspicious of the fellow right away. He stumbled around the office all forenoon until pretty near noon-time, and he got in my way until he became a nuisance around there. We went to the books on the desk, and he looked at the assessment for 1912. The 1914—I

did not place here,—It was in April, I presume, when he was in the office; but I had not commenced to place the assessment of the City of Port Angeles for the year 1914, and, consequently, did not tell him what that assessment would be; because I had not the figures finally placed myself. He stumbled around the office until about noon time, then he invited me to dinner, which invitation I refused. I got suspicious of the fellow, and I thought he was too nice to me and too good to me for my own good. He was all smiles and very bland around there; and at the noon hour I went down on the principal street, the corner of Laurel and Front Street, and I met Mr. Fisher, who he has referred to in his testimony, Frank Fisher. He is Deputy Collector of Customs down there. I knew Mr. Fisher was an Elk, and I told Mr. Fisher what this gentleman was saying to me in the office,—I told him about him asking me for a letter, and just about that particular minute he seemed to be watching us, and around he come and butted into us again.

Q. What do you mean; who was it that butted into you?

A. This gentleman down here with the gray suit on that gave testimony here.

Q. Mr. Grasty?

A. Mr. Grasty, yes, sir; that is the name of the man who butted into us again, and Mr. Fisher says, "Hallahan can't give you any such letter". And then finally he passed on, after interferring with our conversation for some time, he passed along, and Mr. Fisher told me, he says, "Jack,—they call me "Jack" down there a lot,—he says, "Jack, that fellow is no good; we have investigated him and he is no good; don't bother with him no more." Mr. Fisher told me right there. I did not bother with him any more. I believe that he did come up that afternoon, or the following day at the office again and bothered me some more about this letter, and he did not get no letter at no time, nor did I promise to give him a letter at any time. So, a week or two elapsed, and I, at least, had forgotten all about him, and I went down to dinner—

I believe it must have been two or three weeks afterwards—and instead of turning to the West to where I usually eat luncheon, I turned to the East. I can't account for the fact now, and there was a high concrete wall erected at that time as a bulkhead in the grading district, and Mr. Grasty was standing in the sunshine with another fellow, as I went up he rushed right out and grabbed me by the hand and he says, "Hello, Mr. Hallahan, I am glad to meet you", smiling all over his face, and he introduced Mr. King to me as being the son of one of the financiers in Portland, Oregon. Mr. King did not impress me as being a financier at the present time. He was not very well dressed, and as far as outward appearances went, would not be a very good looking financial agent. He invited me to dinner again. I believe this was the third time he invited me to dinner. He was bound to have me to dinner, and I had learned by this time from what I had heard that the fellow was no good,—and I went along with him to dinner. He grabbed hold of me and I went along and talked about commonplace things during the noon hour, and we came back on the street again, and he would all the time inject this loaning of money to the Elks Lodge. He tried to inject that into the subject of our conversation all the time, and would mention occasionally about the low assessment and the high appraisal put on there by the committee, and that letter, that was his story all the time. I believe, in the afternoon that he did go back up to the office again to discuss matters further with Mr. King, and that is about the end of the Grasty proposition, so far as I can remember.

Q. Who was in the office when Mr. Grasty first came in?

A. There was myself, Miss. Barr, one of the clerks, and Ray Haynes, another clerk.

Q. Who is Miss Barr?

A. The lady is present in the room now.

Q. This lady sitting back there in the audience?

A. Yes, sir.

Q. What was her position in the office?

A. She was a clerk.

Q. Was she a deputy?

A. No, sir. She was simply a clerk. I had no deputies in that office. They were all clerks.

Q. Now, in the conversations that were had between you and Mr. Grasty who led the conversation?

A. Why, he led the conversation.

Q. Who directed the channels into which they should flow?

A. He directed them all the time.

Q. What channels did the conversations always follow?

A. It followed the subject matter of the loan of forty thousand dollars to the Elks to erect a building.

Q. And what else?

A. And in the course of his remarks, I do not remember now—I believe it was in the office that he told me—“Now, he says, “Down around Days they are telling around there that young Morse, that young kid, they are making a damn fool out of him. They are making him believe that his lot up here is worth twenty thousand dollars, and he wants for me to put up a building there, that much”. He said, “The lot is not worth anything like that money”. He said, “Our people would not consider for a moment loaning anything like that money, or half that amount of money on it, and they are making a fool of that kid around the hotel.”

Q. Who brought that Morse kid into the conversation?

A. He did.

Q. Did you make reference to it?

A. No, sir.

Q. In continually referring to the letter, what suggestion, if anything, did he make as to what the letter should contain that he wanted you to give him?

A. He wanted me to write a letter down to Portland to his address stating that the assessment was low and that the appraisal by the committee was nearer right, something to that effect, I believe he wanted me to say that.

Q. What did you say to him in reply to his suggestion as to making statements of that sort in a letter?

A. I told him he could not get any such letter from me; he could not, or anybody else.

Q. Did you give him any reason?

A. Any reason.

Q. Did you give him any reason why he could not get such a letter from you?

A. I would like to answer that question in another way before I answer it directly.

Q. All right, go ahead.

A. During my term as county assessor, in Clallam County, almost every day I would receive letters from the outside, people that lived away from there and hold property, they would very often write to the County Assessor for information as to the value of that property, and some person that would want to buy would make them a very low offer and they would very often want to find out the real market value of the property. That question I determined it was not very well for me to answer in the affirmative; so I always pointed out the assessed value. There were some real estate people had been down in Port Angeles and maybe there are a few living there yet that would be unscrupulous and would endeavor to sell a person a wild cat lot at a very high price, and I did not feel that it was my position as County Assessor to be advising everybody about the market value of that wild cat stuff.

Q. (Mr. Frost) The question was, what did you say to Mr. Grasty when he made the request that you supply him with this letter?

A. I told him I would not give any such letter; that the people in Portland had very little confidence in him to require him to send in any such letter down there.

Q. What if anything, did you say concerning your assessment to him?

A. I told him nothing about the assessment. The 1912 book was open on the desk. The 1914 assess-

ment which was to be made on the first of March was not yet made.

Q. (Mr. Ewing) What, if anything, did you say to him about the ratio between the assessed value and the real value of property in Port Angeles?

A. I did not tell him anything about the ratio; I did not tell him anything of the kind.

Q. What, if any, statement did you make to him in the course of your conversation with him about the assessment of timber lands?

A. I do not remember any conversation with him about timber lands.

Q. The conversations with you related principally to the valuations of Port Angeles property?

A. In a general way, or otherwise?

Q. What I want to get at—

A. That is what the general subject of conversation was, the assessed valuations of property in Port Angeles; especially the lots belonging to the Elks and the Morse lot, were the lots especially mentioned.

Q. What, if anything, did Mr. Grasty say to you about the assessment of timber lands in the Western part of the County?

A. I do not remember that he said anything; if he did it has escaped my memory.

CROSS EXAMINATION.

BY MR. PETERS:

Q. Mr. Hallahan, I understand that you say that you soon become suspicious of this man Grasty?

A. I certainly did.

Q. How soon?

A. Very soon after he asked me for a letter and he did not want the letter either; he wanted it to be sent to Portland, Oregon, to his address.

Q. What made you suspicious about his wanting a letter, being sent to Portland instead of handing it to him?

A. It did not look very good to me, nor would it to you, I would not think.

Q. What was suspicious about it being sent away, rather than handing it to him?

A. It would arouse anybody's suspicion, sending it through the mails, rather than taking it in his pocket and taking chances. It might get lost in the mail. I would be sure. I would rather take it then. He wanted it through the mails. It might get lost.

Q. What did you fear; what were you suspicious of?

A. I did not fear anything.

Q. What occasioned your suspicion?

A. I was suspicious that the fellow was no account, that he was wasting my time, and that I was dealing with a person that did not amount to anything. I had certain work to do in my office, and the time could not be wasted with people that did not have any business there.

Q. But you were suspicious of the fact that he was butting in on your time?

A. I was suspicious that he was butting in on my time and he did not represent anything that was substantial.

Q. I understand that you are not an Elk or connected with that concern at all?

A. No sir, I am not.

Q. You don't know anything about the negotiations between the Elks Committee and him?

A. No, sir, I do not; at that time I did not.

Q. You did not know anything about it at all?

A. No, sir, at first I did not.

Q. He told you he was talking about a loan of forty thousand dollars to the Elks, didn't he?

A. Yes, sir.

Q. And he told you that he had received an appraisal of the property by the Elks committee and also an appraisal of the property by Mr. Lutz and Mr. Christensen, and that those differed, that Mr. Lutz and Mr. Christensen put the property at much less valuation than the Elks people, didn't he?

A. I believe he did.

Q. What is the truth?

A. They seemed a little less.

Q. Do you recollect the comparative statements at that time?

A. No, sir, I do not.

Q. You don't remember?

A. No, I don't remember.

Q. Mr. Lutz and Mr. Christensen were reputable citizens of Port Angeles that you knew, weren't they?

A. Yes.

Q. It did not excite your suspicion then that the man should come to you as assessor of Clallam County, and an old resident of Port Angelse where two persons like that, a committee and two reputable citizens differed about the value, did it?

A. Repeat that question again.

Q. It did not excite your suspicion that a man who was backing a loan of forty thousand dollars should come to you for information when two parties like the committee of the Elks and those two reputable citizens differed about the value of the property?

A. They could have been imposed upon just as well as I. They weren't immune.

Q. Didn't it seem to you at that time quite natural that he should come to you and ask you something about the values.

A. It sounded kind of funny to me that he did not come to me in the first place instead of going to the Elks. He could have done that too.

Q. What he stated to you at that time was that he was desiring to find out the real value of this property and he had those two different statements about it and he wanted to know what the assessed value was, didn't he?

A. The books were on the counter for him to look at.

Q. Did he ask you what the assessed value of the property was?

A. He probably did; I am not sure about that.

Q. You remember of those other things so well, why don't you remember about that?

A. I am not sure that he did; it is possible that he did.

Q. As a matter of fact, didn't he?

A. I would not say that he did; I absolutely would not say so; but I have a presumption that he probably did.

Q. And you looked it up?

A. I probably did.

Q. And you told him?

A. I told him what the 1912 assessment was.

Q. What was it?

A. Which?

Q. The 1912 assessment?

A. On that particular property?

Q. Yes, sir.

A. It is entirely different from the amount that he has testified to the other day.

Q. You said you looked it up; what was it?

A. Describe the property and I will tell you. I do not know what the Elks property was.

Q. You said you looked it up for him for 1912, and then told him; what did you tell him?

A. If I told him at all—I am not positive I told him at all—but if I did tell him I told him the figures that were on the books.

Q. What were the figures on the books?

MR. EWING: This is improper examination. This is a memory test. It is not proper. One man may have a good memory and another one a poor one.

Q. (Mr. Peters) Do you know what the Elks property was?

A. I think I remember it.

Q. What was the assessed valuation as stated on the books?

THE COURT: The objection is overruled.

MR. EWING: Note an exception.

THE COURT: Exception allowed.

A. The Elks property for 1911 and '12, they owned lot 1, block 2, Norman R. Smith's sub-division, which was at that time assessed for three hundred and fifty dollars.

Q. It was assessed for three hundred and fifty dollars?

A. Yes, sir, if my recollection is right.

Q. What was the other assessed at?

A. They also owned lots 15, 16 and 17 and 18 in block 16 of the same addition.

Q. What were those assessed at?

A. Lots 15, 16 and 17 were assessed at six hundred and fifty dollars each, and lot 18 was assessed at seven hundred and fifty dollars.

Q. The three lots were assessed at six hundred and fifty dollars each, and the first lot was assessed at three hundred dollars?

A. The first lot was assessed at three hundred and fifty dollars.

Q. And this other lot was assessed at seven hundred and fifty dollars?

A. The other lot was assessed at seven hundred and fifty dollars, and that constituted all the Elks property, insofar as I know and can remember now.

Q. Was that the property that he was to make the loan on?

A. I think so.

Q. What did Mr. Lutz and Mr. Christensen appraise them at?

A. I don't remember.

Q. Didn't he show you?

A. I think he did.

Q. How did you remember what they were assessed at if you don't remember what those people had them appraised at?

A. I refreshed my mind on the assessment lately, since I heard the gentleman on the stand.

Q. What had the Elks committee appraised them at?

A. I don't remember.

Q. Was there a very great difference between the assessment of the Elks—or the appraisal of the Elks and their assessed valuation?

A. Was there a difference?

Q. Wasn't there a very great difference?

A. I believe there was considerable difference.

Q. What proportion of the value appraised by

the Elks committee was the assessment as appeared on the books for 1912?

A. I have said I don't remember the appraisal put on there by the Elks committee; consequently I could not tell you the percentage of difference.

Q. Could you tell us somewhat about the relative difference?

A. No, I would not attempt to.

Q. The difference was so great that it occasioned this inquiry on Mr. Grasty's part, didn't it?

A. What?

Q. The difference was so great that it occasioned this inquiry on Mr. Grasty's part, didn't it? The difference between the two was so great that it occasioned the inquiry on Mr. Grasty's part?

A. It seems that he had another object in view in getting that.

Q. That is the way it appears now from your view of it, but at that time the matter in question was that the disparity between the appraised value and the assessed value was very great, wasn't it?

A. It seemed that way, yes.

Q. Wasn't that it?

A. What was?

Q. Wasn't that the ground on which he asked you for the letter?

A. I presume it was some of the ground, and I presume—

Q. The very ground on which he asked you for that letter was the statement at that time, whether it was true or not, was the statement to you that he was going to submit this letter to his Portland clients, and he wanted you to explain this great difference between the assessed value of that property and the value it was appraised at by both these gentlemen, is that not a fact?

A. I presume, something like that; I am not sure.

Q. Don't you know it was?

A. I am not positive about it.

Q. What was the other ground?

A. He did not leave such an impression upon me as you might imagine.

Q. He did not?

A. No, sir, he did not.

Q. Then what was it that made you suspicious?

A. His very statement made me suspicious.

Q. What statement?

A. His statement about the letter.

Q. What letter?

A. About his receiving any kind of a letter and mailing it to Portland, any kind of a letter of that kind to a business person looks suspicious. Had he been a business man he would not have wasted the time he did in my office; he would have done his business and went on and let me do mine.

Q. As assessor of Clallam County haven't you had many inquiries from people out of town about the valuation of property and the assessed value of property?

A. Yes, by letter.

Q. Did you grow suspicious of them every time they asked you that?

A. Not always.

Q. But generally that was an occasion for suspicion with you?

A. He raised the suspicion himself.

Q. I am asking you about these other people that wrote to you from out of town for the assessed value of property, did that always arouse your suspicion?

A. Not always, no.

Q. It generally did, didn't it?

A. I can read a letter pretty thoroughly; I can read it even between the lines. I think I can read it between the lines, if necessary.

Q. What was suspicious about this man who pretended to be making a loan of Forty thousand dollars and wanted to find the difference between the assessed value and the real value?

A. What was his purpose?

Q. What was the occasion of the suspicion?

A. What was the occasion of my suspicion?

Q. Yes, sir.

A. Didn't I answer that already?

Q. I did not understand that you did; what I want to get at is, what made you suspicious?

A. I told you the reason I got suspicious was because he wanted this letter to his people in Portland that he was working in their behalf. He told me like this: I asked him, "why do you want this letter", and he says, "The reason I want this letter is this: the difference appears to be so much between the assessed value of this property and the value placed thereon by this committee that should I go back there to Portland, Oregon, and tell my people who are to loan this money, they would grow suspicious of me, and think I was standing in with the Elks people, but a letter from you would clear the whole proposition up."

Q. Exactly. Now, nobody knows anything about that, but you told him that you would not give him such a letter?

A. I did.

Q. Why did you tell him that it was not a fact that the assessed value differed so much from the real value?

A. I told him he should not receive any such letter from me.

Q. Did you tell him that it was not a fact that the assessed value differed so much from the real value?

A. I did not know what the real value of their property was at that time; why should I answer such a question in such a way. I did not know what the real value of that property was.

Q. He showed you the appraisal of Mr. Lutz and Mr. Christensen?

A. That was the appraisal of them and every man is entitled to his opinion; it was their opinion of the value of that property. They were entitled to their opinions.

Q. At that time in your judgment how did the valuation fixed by the committee and by Mr. Lutz and

by Mr. Christensen compare with your judgment of the real value?

A. I did not exercise my judgment up until that time in May, 1914, at the time of the assessment.

Q. I am not talking about the assessment; I am talking about this interview that you had with this man Grasty, at the time he came in there and showed you those appraisals and you looked at the assessment list and saw the assessment and gave it to him for 1912, and then he says, "Here, Mr. Hallahan, there is such a great difference between these two that I want an explanation of the matter to these fellows in Portland, and I want a letter for that purpose," did you tell him that there was any such difference between the assessed value, that there was no such difference between the assessed value?

A. Did I tell him that?

Q. Yes, sir.

A. There may have been a difference between the assessed value and the real value, at that particular time, because he was looking at the 1912 assessment, and this was the year of 1914.

Q. Was there a great difference, and what was the difference between the assessed value of 1914 and this appraisal of this committee?

A. I do not remember the figures of the appraisal committee. I do not remember those figures.

Q. Now how many interviews did you have with him in your office?

A. I believe he was there on two occasions, or probably three.

Q. On three occasions?

A. Probably; I am not quite sure.

Q. You heard the statement that you went out to lunch with him?

A. I believe there was such a statement made.

Q. And Mr. King, you heard the statement of Mr. King that you went out to lunch with him and Mr. Grasty together?

A. I believe I did.

Q. My recollection is that they said that you

went out to the Sol Duc restaurant, is that not a fact?

A. When I met Mr. King for the third and last time, when I met Mr. Grasty, he was down in front of the Sol Duc Restaurant on Front Street. He was basking in the sunshine at that time, and I come up by them, both were there and he come along and grasped me by the hands and said "How do you do, Mr. Hallahan," and I jollied him a little bit, and he says, "You refused to eat dinner with me on an occasion or two, and you had better come along now," and we talked about frivolous matters for a moment or two, and I concluded I would go and have lunch with him, although it was contrary to my custom to do so.

Q. And you did go in and have lunch with him?

A. I did go in and have lunch with him.

Q. After you came out from lunch you were standing there and talking with him, was that the occasion when you met Mr. Fisher?

A. I met Mr. Fisher before that. This was his last visit.

Q. You met Mr. Fisher before this occasion?

A. Yes, sir.

Q. Now you say that you heard that the fellow was no good; you not only had suspicions that he was no good, but you heard that the fellow was no good; from where did you hear that?

A. Mr. Fisher told me that they had investigated the fellow and he was no good.

Q. Mr. Fisher told you that?

A. Yes, sir.

Q. Was that the reason that Mr. Fisher gave you in giving you the advice not to give him the letter?

A. Well, this was afterwards he told me.

Q. That could not have excited your suspicions at that time if Mr. Fisher had told you?

A. You probably did not understand me.

Q. No, sir, I did not, if that is the fact.

A. When Mr. Fisher and I were in conversation Mr. Grasty come along and butted in; instead of his being like a gentleman, he butted into our conversation,—do you understand now? Then Mr. Fisher said

back to Mr. Grasty, "no, Hallahan can't give you the letter you have been demanding, or asking for."

Q. What reason did he give you?

A. I do not know why Mr. Fisher told me that. I do not know why; no, why should I know?

Q. What reason did Mr. Fisher say?

A. I can't give you any of Mr. Fisher's reasons, Mr. Peters; there is no use asking me.

Q. That is all the conversation then, Mr. Fisher says, "No, Mr. Hallahan can't give you that letter"; will you swear that Mr. Fisher did not say to Mr. Grasty at that time, or to you, that you could not give him such a letter, that it would be against the law and would incriminate you?

A. That I said.

Q. No, that Mr. Fisher said?

A. Mr. Fisher might have made that remark.

Q. Did he, or did he not?

A. I would not say that he did.

Q. Would you say that he did not?

A. I would not say that, neither; he might have said so.

Q. What is your best recollection as to whether he did or did not?

A. I do not remember anything I am not positive about; I would not say about.

Q. Did you say to Mr. Fisher that it was a fact that the assessed value of that property was so much lower than the real value?

A. Why, Mr. Fisher knew the assessed value of the property, I presume, and he also had good knowledge of the market value of the property.

Q. If the assessed value of the property was so much less than the real, or market value, why should Mr. Fisher advise you not to give a letter to that effect?

A. I don't know what Mr. Fisher's reasons were; I told you that already, twice, now; I don't know what Mr. Fisher's reasons were.

Q. And he gave you no reasons?

A. He was not speaking to me; he was speaking to Mr. Grasty.

Q. You were all three there after Mr. Grasty butted in, were you?

A. Mr. Grasty, having butted into our conversation, Mr. Fisher turned back on me and addressed himself to Mr. Grasty. I kept silent.

Q. Mr. Fisher said to Mr. Grasty, "Hallahan can't give you such a letter"?

A. I believe he did say that.

Q. You heard the whole conversation between Mr. Fisher and Mr. Grasty, didn't you?

A. Yes, sir.

Q. Did Mr. Fisher say, "Hallahan can't give you such a letter as that because it is against the law and would incriminate him"?

A. He may have said so, but I am not so positive, he may have said so. He might have said, "I can't give you such a letter", and you easily inject a few words in it, a sentence like you speak there and change it all around. A few words will change that entirely around, you know.

Q. Change what around.

A. What you have already repeated now.

Q. Tell me exactly what occurred?

A. I don't remember what was said down there, but I do know that a few words will change things materially. I know there have been lots of words changed in this proposition.

Q. Your objection then, as I understand, to giving this letter was not because the assessment was so far below the market value, but simply because you had suspicions of this man Grasty was that it?

A. He aroused my suspicions when he asked me for the letter and not only asked me for the letter, but he wanted me to specifically direct that letter to his address in Portland, Oregon. It was the first time during the time of my service in that office that anybody asked me to do anything like that, before, or since.

Q. What did he ask you to put in the letter?

A. I do not remember everything he asked me to put in the letter.

Q. What was some of the things he wanted you to put in the letter?

A. He wanted me to make a statement about the vast difference between the assessment and the appraisal, appraisal by himself and others on this property, that great vast difference that was presumed to exist there.

Q. You must have taken into consideration the vast difference that existed between the appraised value and the assessed value at that time when he stated that, did you not?

A. There was a difference, of course, there was.

Q. What was the difference?

A. I don't remember.

Q. Why would not you look at it and state to these people what the reason for the difference was?

A. To what people? In this letter?

Q. Yes, sir.

A. I guess I did not.

Q. Why shouldn't you?

A. Because I would be a fool if I did.

Q. Why so; why would you be a fool?

A. It is evident from what has transpired here.

Q. Why was it impressed on you at that time that you would be a fool?

A. They wanted a letter from me awful bad; that was evident, that they wanted it for this case, too; it seems like they had a job fixed in getting that letter from me, but they would never get that letter, I tell you that. They wanted it so bad; they wanted it so bad they had to send a third person to get it, and they tried another person to get it.

Q. Who was that person?

A. Mr. Babcock.

Q. How did he try to get it from you?

A. By the testimony produced, by Mr. Grasty's testimony, himself.

Q. Do you know, did he come to you about it?

A. Mr. Babcock?

Q. Yes, sir.

A. He certainly did not.

Q. When you say they sent another person to you it is not from any communication between Mr. Babcock and you, but from the testimony you heard in this case?

A. It is from the testimony of Mr. Babcock and Mr. Grasty himself that I heard here.

Q. Did you tell anybody else there about your suspicions of Mr. Grasty?

A. Sir?

Q. Did you tell anybody else there about your suspicions of Mr. Grasty at that time?

A. At that time, no.

Q. You did not mention it to anybody?

A. Not as I remember it. It all passed out of my memory. I had other things more important to think about at that time.

Q. You did not have any talk with Mr. Grasty about timber lands and the assessment of timber lands?

A. I don't recall any conversation of that kind.

Q. Will you swear that you did not?

A. I say I don't recall any such conversation.

Q. To the best of your recollection?

A. I have no recollection in the premises; I don't remember it.

Q. Didn't you tell Mr. Grasty in the presence of Mr. King substantially that it had been the custom of the assessor of Clallam County to assess the timber lands high in order to force the owners of timber lands to operate?

A. No, sir; I did not; nor anybody else in Clallam County, nor the state of Washington.

Q. Or substantially that?

A. No sir; I did not say that to Mr. Grasty, or to anybody else.

Q. You never said that to him?

A. During my term of office to anybody, to any individual, living or dead, no, sir, I did not.

Q. How is it that you know that so well, because you never talked to anybody?

A. Because I know it so well, because I knew my position as county assessor. I knew my duties under the law. I knew the fact of my making such a statement would be wrong in law, and I would be leaving myself liable. I knew my position from a legal standpoint in that matter all the way through, from the time I was elected. I am not a fool. I understand the law. I am not an attorney; but I understand the law pretty thoroughly, and when you trap me, you will trap a squirrel all right now.

Q. I want to get at the facts; I am not capable of trapping anybody, and don't want to.

A. You can't either.

Q. No sir, I can't, and I don't want to.

A. Mr. Grasty tried it.

MR. PETERS: I would not recommend myself to the court if I did try to trap a witness. I am trying to get the facts.

Q. You stated to me that you had no recollection of any conversation?

A. I have no recollection of any conversation with Mr. Grasty concerning timber lands in Clallam County. He was not there for that purpose apparently.

Q. Then you turn around and say positively in the most violent fashion you never told him this about timber lands?

A. I tell you I have no recollection of any conversation concerning timber lands in Clallam County.

Q. Or the assessment of timber lands?

A. Or the assessment of timber lands. I have no recollection of it, and I would say further positively that I did not say that we were over-charging timber men; I am sure I did not say that.

Q. Or anything to that effect?

A. No sir.

Q. Either to Mr. King or Mr. Grasty?

A. Or to Mr. King neither, or to anybody else in Clallam County, or this state. I never made any such statement to anybody. Mr. King, I guess, was a stool-pigeon for him.

Q. What was that?

A. I presume Mr. King was simply a stool-pigeon brought along for that purpose. It looked that way to me.

Q. Mr. Hallahan, on what basis did you assess the property in 1912 in Clallam County?

A. What do you mean by "basis"?

Q. Did you assess it at its full market value, or at a percentage of its market value?

A. Does that enter into this case? I thought my assessment was on the files here. I thought my assessment was on trial before this Court. I thought that was for you people to determine.

Q. (Question read)

A. I did not assess it at its full market value.

Q. At what value did you assess it?

A. Do I have to answer that question?

THE COURT: Yes, sir.

A. What percentage you mean, don't you?

Q. At what percentage, yes sir.

A. Is that what you have reference to?

Q. Yes sir; at what percentage did you assess it at?

A. The percentage I assessed in 1912?

Q. You have heard the question, and you know all about it now; answer it.

A. That was for 1912. The percentage that I assessed all the property of Clallam County?

Q. Yes sir.

A. Around about fifty per cent.

Q. Did you assess the timber lands at fifty per cent?

A. I endeavored to do that.

Q. And the city property at Port Angeles at fifty per cent?

A. I endeavored to the best of my ability, and the information at hand at that time, to assess property at about fifty per cent.

Q. What do you mean by "about fifty per cent"?

A. I mean around about fifty per cent.

Q. How near around about it?

A. You want me to determine why and how I done it?

A. Answer the question. How near around about fifty per cent you assessed the property in 1912?

A. I assessed it as near fifty per cent as I could.

Q. Was it your intention to assess it at fifty per cent, or fifty-one per cent?

A. Fifty per cent.

Q. Did that apply to farm lands?

A. To everything.

Q. And to city lands?

A. To city lands.

Q. And timber lands?

A. To timber lands.

Q. What did you figure as the full market value of the plaintiffs' lands in this case?

A. I did not figure those plaintiffs lands in this case.

Q. What did you figure to be the full market value for the purposes of assessment in this zone up here?

A. Repeat the question.

Q. (Question read.)

A. The assessment for 1912 in those lands and in this zone along the Straits?

MR. FROST: We object to that for the reason the law itself requires the assessor to place a separate value upon each legal description of land according to the largest legal sub-division in one ownership, and the assessor was not required under the law and it would be impossible for him to state, what particular value he put upon lands of any particular piece of property. The Supreme Court has declared that taxes and assessments are levied in mill and not in per centum, and in accordance with legal descriptions of property.

THE COURT: I understand from both sides that this timber land was so divided into zones and everybody else have been questioning about zone values. The objection is overruled.

MR. FROST: My suggestion goes to the individual descriptions of land; they might ask him what

he assessed some individual particular description of land; that would be a proper description upon his assessment roll; but not ask him what he assessed all values in one particular zone.

Q. (Question read)

A. The question is too ambiguous; I could not answer it that way.

Q. In what way did you not understand it, Mr. Hallahan?

A. You haven't asked me a direct question, you however, asked me an ambiguous question.

Q. You put on this land up here in the Straits zone for fir in 1912 a valuation of eighty cents a thousand, did you not, the assessed valuation of eighty cents a thousand, did you not?

A. I believe so.

Q. What do you figure to be the market value of lands in that section, in that zone?

A. I figured that eighty cents was about fifty per cent of its true value.

Q. You did?

A. Yes sir.

Q. As I understand from counsel the way you made up your assessments was to take each section and to make an assessment of each section, was that it?

A. Oh, no.

Q. You did not do it that way?

A. No, sir.

Q. You heard the objection of counsel here, just now, did you not?

A. Every description of property is assessed separately, every lot and every sub-division is assessed by itself.

Q. How did you assess these timber lands, just tell us the method in which you did it?

A. I explained that the other day.

Q. Do it again.

A. Each forty acres, if it be owned by one person, or each lot, or legal sub-division, is charged on the books by itself, and assessed by itself.

Q. Just tell us how you would assess any given

tract of timber in that zone, take any section in this Straits zone?

A. The method I employed to make my assessment was to figure the amount of timber in that particular description.

Q. You figured the amount of timber in that particular section?

A. In that description, not in the section.

Q. What description would you take?

A. Well, say, for instance, the Northeast quarter of the Northeast quarter of Section 1, township 31, range 14.

Q. Then you would take a certain quarter section?

A. I would take the Northeast quarter of the northeast quarter forty acres, and I would find thereon one million feet of fir, I would find one million feet of cedar, and one million feet of hemlock, for instance.

Q. What did you do then?

A. I could make the assessment by figuring at that rate, eighty cents, or seventy cents for fir, spruce or cedar, and forty-five cents for the hemlock.

Q. Then you did put down on a piece of paper the assessment for that particular quarter, that forty acres?

A. Yes, sir.

MR. EWING: I object to that on the ground that it is not cross examination. We do not examine him on those points and the court will remember our time is very short. We have covered with him two points: the matter of the conspiracy, and the matter of the interviews with Mr. Grasty. The matter of the assessment has not been gone into at all, and at this time it is improper cross examination, particularly due to the situation we find ourselves in in this case.

THE COURT: I overruled it on the ground that it is not proper cross examination, but I think it would be in the matter of saving time.

MR. PETERS: I think it is very important on our position on showing this zone, or I would not take the time.

MR. EWING: They are making him their own witness. We have not gone into this at all.

THE COURT: When fraud is alleged then all the bars are let down and grouped, every corner in the case, and everything that touches it.

MR. EWING: Note an exception.

THE COURT: Exception allowed.

Q. You would put down the assessment of this particular forty acres?

A. If you will let me explain it I probably can explain it faster than you can. Take the northeast quarter of the northeast quarter, that is forty acres of land that is shown on the books. We got a tab showing from the cruise books the number of feet of fir, and the number of feet of cedar, all through, being in the same class, in the No. 1 class, and add the three together, and multiply them by the rate which would give the total assessment. Then the forty acres of land was examined as to its soil, character, whether rough or otherwise, and added to that was the appraisement of the land; if there was any poles, or ties on that particular description, they were charged and the total added up together and carried into the record.

Q. Where is any record of assessment of any forty acres in your books?

A. Every forty is assessed pretty nearly by itself.

Q. Every forty is assessed pretty nearly by itself?

A. Yes, sir, and a pencil record kept in the assessor's office.

Q. Where is the assessment of any forty; have you got it here in your books?

A. There are books that will show forty acres assessment, yes sir.

Q. Of these various tracts?

A. I would not say about those particular tracts.

Q. (Mr. Riddell) What do you want, 1912, or 1913? (Get the books)

A. Either one will do.

Q. (Mr. Peters) Did you do that with every forty acres of timber lands you have assessed?

A. Every forty acres of timber land we could

separate at all has been charged upon the books separately.

Q. How did you come to draw those lines here by zones?

A. That was a matter of calculation.

Q. How do you calculate it?

A. We calculate from the information at hand.

Q. Give us the calculation; what did you put in the zone on the Straits?"

Mr. Frost, for the defendants, objects to this line of cross examination upon the ground that the witness cannot be interrogated as to the mental processes or theories of the assessing officers in making up the assessment. The objection is overruled by the court, and an exception reserved.

THE COURT: That may be true, but this case cannot be tried at once, and it might be that the Court would be forced to the conclusion, that in establishing these zones that they were established so arbitrarily and without any pretence on the part of anybody that there was any reason for them that would constitute constructive fraud. I will overrule the objection.

MR. FROST: Note an exception.

THE COURT: Exception allowed.

I am willing to assert that it seems perfectly reasonable to me that zones should be established, I would not have the assessor go out and look at every tree and every limb on every tree. There has got to be a line drawn some where, so as to establish legal subdivisions, or zones. It is all a matter of establishing zones some time, whether ten acres, or a million acres in them; It appears reasonable to me that zones should be established. But if counsel should make out that it was so arbitrary as to constitute constructive fraud he should have an opportunity to do it.

"Q. (Mr. Peters) How did you come to draw this line that I am now tracing?

A. That line represents my judgment at the time I put it on there.

Q. Judgment of what?

A. Judgment as to the assessment of timber within that line to the north of that line.

Q. Then, as I understand you, you made a detailed estimate of the values for the purposes of assessment of over forty acres and then——

A. The law requires that——

Q. And you fulfilled the law in that respect?

A. Yes sir.

Q. And after having done that you got out a map and drew a line down here in this way, and you said that all of the timber lands up along here, included between this line and the Straits, was assessable at eighty cents for fir, cedar and spruce, and forty cents for hemlock, is that a fact?"

Whereupon Mr. Ewing, for the defendants, renews the objection, which is again overruled by the Court.

"Q. (Question read)

A. For the year 1914?

Q. For 1912, for eighty and forty?

A. Yes, sir.

Q. That is the way you did that?

A. That is the way I done it, yes sir.

Q. Why didn't you begin this line, say, four or five miles over to the east of where you did, and run it down two miles south of where you did?

MR. EWING: I object to that.

Q. (Mr. Peters) What I want to get at is to have you explain just why you ran the line the way you did; why did you run that line just the way you did?

A. My judgment at that time ruled my way. My judgment was that the timber laying north of that line was worth that amount for assessment purposes.

Q. Your judgment was that all the timber laying north of this line, and south of the Straits, I am now pointing at what you designate zone 1, was worth eighty and forty?

A. Yes, sir.

Q. That is why you drew that line that way?

A. Yes, sir.

Q. And that is the way you assessed the property for 1912?

A. That is the way I assessed the timber, the timber only.

Q. Mr. Hallahan, now referring to this zone No. 2, why did you draw the lines, the boundaries, of this zone No. 2, in the manner in which you did?

A. That is about my judgment. I exercised my best judgment, was one of the reasons.

Q. As to what?

A. Why I drew the lines there. The main reason was my exercise of judgment.

Q. And you claim all the lands lying in that zone of assessible value on timber of seventy cents in 1912, for fir, cedar and spruce, and thirty cents for hemlock? I presume those are the exact figures. It is your map.

A. I do not know about that map.

Q. If you come here and look at it, or refer to your own map?

A. I expect them figures are correct. I am assuming that your figures are correct.

Q. Yes, sir, assume that.

A. Yes, sir.

Q. Then in the same manner you formed this zone No. 4, did you, in which, for 1912, the timber is assessed at sixty and thirty?

A. To shorten the matter up, I would say that I exercised my judgment in establishing all these zones, in making the zones I took in the surface of the country, the kind of timber and other characteristics that entered into the general topography of the country, everything concerning its physical character.

Q. Do you mean to tell us that every forty in this upper zone, for instance, after you figured it out, figured out at eighty and forty?

A. Every one was figured at the same rate.

Q. And every forty that is within this zone No. 1 figures out at an assessible value at eighty and forty, does it?

A. Eighty and forty, where it is timber land.

Q. Every forty included in the detailed assessment that you figured out?

A. Yes, sir.

Q. And every forty that you figured out in the detailed manner in which you have heretofore related that lies within this zone No. 4 figured out at sixty, and thirty cents for 1912?

A. Yes, sir.

Q. That is true of all these zones?

A. That is true of all these zones.

Q. Were the logging conditions exactly the same with respect to every forty?

A. As I said before, according to my best judgment in the premises, this represents my judgment, and my judgment is based on the knowledge I had at the time.

Q. Are the logging conditions of this tract which I point to here now the same as the logging conditions in this tract in yellow down there?

A. I can't tell you off-hand.

Q. Why did you put the same value?

A. I could not tell you that off hand, either. My judgment is uniform within the zone.

Q. Are all the properties within the zones of the same logging abilities, the same accessibility?

THE COURT: I do not think he is an authority on that.

Q. Has there been any change in the value of timber lands in Clallam County between 1912 and 1914, that is the timber lands concerned here?

A. Any change in the value?

Q. Yes, sir.

A. Well, there might have been; I am not the best judge of that.

Q. Was there, in your judgment, any change in their values?

A. In my judgment there was very little, excepting this: I do know that our local mills in Port Angeles raised the price of their timber on the local market on the first day of March, 1914.

Q. Your local mills?

A. Yes, sir.

Q. That is, on the manufactured lumber?

A. Some of it manufactured in Seattle.

Q. I asked you whether the value on timber lands involved in this suit changed between March 1, 1912, and March 1, 1914?

A. I expect that they did not.

Q. Then why did you assess them at some fourteen per cent higher in 1914 than in 1912?

A. Because I had discovered that I had under-assessed the lands for 1912.

Q. You had assessed them for 1912?

A. Yes, sir.

Q. How did you discover that?

A. By calculation. I had my cruises completed in 1914, which I did not have in 1912. There was only a partial county cruise in 1912.

Q. Only a partial cruise?

A. A partial cruise, under my jurisdiction, and I did not have the information at the time in 1912 that I had in 1914, and I was not in the same position to intelligently put on the same assessment that I did in 1914, consequently I discovered in 1914 that I had under-assessed the timber in all the zones, or in all the county, in the year 1912. It was an error on my part, and it was not done intentionally. I did not have the information I had in 1912. I only had very little information at that time.

Q. (The court) You say you did not have it that you had in 1912? You mean 1914.

A. The information I had in 1912, I did not have that in 1914.

THE COURT: You are turned around again.

A. I mean it the other way. I mean I did not have in 1912 the information that I did have in 1914. Now, that is correct.

Q. (Mr. Riddell) All the rest of us were wrong, and you were correct.

A. Therefore when 1914 came, I changed my values. The information which I derived satisfied me that my assessment for 1912 was an under-assessment

for the market value at the percentage applied.

Q. (Mr. Peters) Do you mean to tell us that you did not make the levy of the assessment upon the same cruise in 1914 that you did in 1912?"

Witness says, there were considerable of the county lands uncruised in 1912, when he made the assessments. He thinks all of the ranges 14 and 15, which comprise a vast amount of the timber and lands of the county were uncruised. There was a mixed cruise upon it, private cruise and county cruise. Witness points out as uncruised in 1912, townships 15 and 16 in the west part of the county, and Range 14 was not cruised, except possibly township 28, and Range 9 and all east of range 9 was probably not cruised.

"Q. (Mr. Peters) But barring those exceptions which you have referred to the assessment of 1914 was based upon the same cruise as 1912?"

A. Yes, sir.

Q. Then why did you raise the assessment on those lands which were not in these townships referred to by some fourteen per cent?

A. Why did I raise the percentage here, and not in the other places?

Q. No sir, I did not ask you that.

A. It was under-assessed, as I said before; in 1914 I discovered.

Q. Yes sir, but there was no change in the cruises.

A. I know there was no change in the cruises.

Q. How was it under-assessed?

A. Because I discovered that it was.

Q. In what way did you discover it?

A. I discovered it after I had the entire county cruised, and all the information at hand I discovered that the assessment was under.

Q. Now, what new information did you get with reference to this timber land that was not within the range which you have above referred to as were re-cruised, or cruised after 1912; what new information did you get about them?

A. About this land here?

Q. Yes, sir.

A. I do not know whether you can call it new information on about the land; I had the information insofar as reports were concerned, but their value was not determined. I had determined since then an outlet for that timber that I had not thought of before

Q. What feature induced you to increase the percentage of assessed valuation upon those tracts of the plaintiffs that were not within any of the ranges that you referred to as being cruised in 1912?

A. In 1912, March 1, when I made my first assessment, there was no railroad in Clallam County, excepting the logging road. The Milwaukee Railroad people were not building in this county, and they were not contemplating to build it, so far as I knew, In March 1st, 1914, they had a line of railroad from Port Angeles westward, to, I believe, the western line of range 9, or thereabouts, a right-of-way, and graded, and they had a right-of-way secured to the eastward, and they were prosecuting the work of constructing the railroad.

Q. That is why you increased the assessed valuation from 1912 to 1914?

A. It was one of the reasons.

Q. What were some of the others?

A. The other reasons were, as I said before, I discovered this timber in here, that you have mentioned particularly had an outlet that I had not dreamed of when I made the assessment of 1912.

Q. What was that outlet?

A. Probably in two ways. By way of this railroad and by way of Lake Crescent.

Q. That is the only outlet, the outlet by the road?

A. Yes sir.

Q. You have told me there were other reasons; I asked you what the other reasons were.

A. I told you that was the main reason.

Q. No, you did not tell me that was the main reason; what were some of the other reasons?

A. It was under-assessed at that time.

Q. Why did you conclude that it was under-assessed? What were some of the other reasons? Why did you determine that it was under-assessed, besides the reason that the Milwaukee line had built its railroad?

MR. FROST: I object to that. They are undertaking to go into the mental processes of this witness, and the Supreme Court of the United States has expressly ruled that that is highly improper.

THE COURT: The objection is sustained.

MR. PETERS: Note an exception.

THE COURT: Exception allowed.

MR. PETERS: I desire an exception and will offer to prove by this witness if allowed to answer that he would not be able to give any other reasons than the reasons that he has already given, as being this line of the Milwaukee building, as he before stated.

THE COURT: The offer is denied.

MR. PETERS: Note an exception.

THE COURT: Exception allowed.

Q. Mr. Hallahan, as I understand you, you assessed all of the property, the city property, the farm property, the timber lands and the personal property in Clallam County at the same rate; that is, at fifty per cent of its actual value?

A. I endeavored to do that, yes.

Q. Do you know what the assessment for 1914 was on the Port Angeles Trust & Savings Bank?

A. I see you have the statement in front of you there. I do not quite remember.

Q. Two thousand dollars?

A. Something like that.

Q. Do you know what the capital stock of that institution was?

A. It was a bank, just incorporated a few days before the first of March, and did not have anything except capital stock.

Q. Do you not know that the capital stock of that bank was twenty-five thousand dollars?

A. Presumed to have been, yes.

Q. And you assessed that at two thousand dollars?

A. Yes sir.

Q. At what did you assess it for 1912, the Bank of Clallam?

A. You have the statement there.

Q. Three thousand dollars, wasn't it?

A. Yes, I presume that is correct.

Q. Do you know what the capital stock of that is?

A. I think it is twenty-five thousand dollars.

Q. Twenty-five thousand dollars?

A. I think so.

Q. What was the surplus of that bank at that time?

A. I do not know.

MR. EARLE: Don't you know that the surplus and undivided profits of the bank of Clallam ran something over five thousand dollars?

MR. EWING: Is your Honor still of the opinion that they can make their case on cross examination when we do not touch on any of these points with this witness?

THE COURT: The objection overruled.

MR. EWING: Note an exception.

THE COURT: Exception allowed.

Q. (Mr. Earle) Don't you know the size of the surplus of the Bank of Clallam in 1912?

A. I cannot carry all the figures of Clallam County in my head. It is impossible for me to do so. It is unfair to ask me.

Q. What did you consider the basis on which you were assessing Clallam County?

A. I think I was assessing that bank like everything else.

Q. You were assessing that bank at the same rate?

A. Yes, sir.

Q. Do you know what you assessed the Citizens National Bank of Clallam County at?

A. I think the same rate as the others.

Q. Two thousand dollars?

A. I think so.

Q. Do you know what the capital stock in 1912 was?

A. Twenty-five thousand dollars.

Q. Do you know what the surplus and undivided profits were?

A. I don't remember; I don't know as it cuts any particular ice.

Q. Do you know what the assessment on the Bank of Sequim was in 1912?

A. I don't remember.

Q. Was it twelve hundred dollars?

A. Probably.

Q. Do you know what the capital stock was?

A. I do not know.

Q. Was it not ten thousand dollars?

A. I think that is it, yes sir.

Q. And didn't the surplus bring it up to twelve thousand dollars?

A. I do not know about the surplus.

Q. This Citizens National Bank of Port Angeles, is the Bank which John Hansen, Chairman of the Board of Equalization is director, isn't it?

A. I do not know.

Q. Don't you know that he is the director of that bank?

A. He probably is; I do not know.

Q. Do you remember what the assessment of that Bank was in 1914?

A. About three thousand dollars, I presume.

Q. Had the capitalization been increased since 1912?

A. I do not know.

Q. Didn't it stand with surplus and undivided profits at something over thirty thousand dollars?

A. I do not know.

Q. Did you make it your business to find out?

A. In what manner?

Q. The Statute of the State prescribes how you shall assess Banks, doesn't it?

A. Supposing the bank does not give me for assessment what they have. I have no power, as county assessor to enforce anybody to do anything.

Q. Did you try to find out?

A. I got a statement from them, I presume.

Q. You could have gone into the office?

A. I could not enforce any statement.

Q. You could have gone into the office of the auditor of Clallam County and found out the capitalization of that Bank, couldn't you?

A. I probably could.

Q. You knew that you could?

A. I probably could.

Q. You knew that source of information in the office was open to you, didn't you?

A. I am satisfied of that. I told you about the capital stock.

THE COURT: There does not seem to be any question about the capital stock.

WITNESS: Regarding the assessment of Banks in this State I would like somebody to tell me how they are assessed.

Q. The Statute provides that.

A. They all have their method of assessing them. I haven't found out yet how to assess a bank.

Q. How did you assess them?

A. At a flat rate.

Q. What was that rate?

A. Three thousand dollars, as appearing in the record, banks with real estate.

Q. But in assessing the bank of Sequim in 1912, what rate did you apply to that?

A. The same rate.

Q. Was it not a ten per cent rate?

A. I do not know; it was about the same rate; according to the capital stock it is not.

Q. You applied the same rate to all the banks, didn't you? You applied the same ratio of assessment to all the banks?

A. I think I endeavored to do it.

Q. You treated the banks all alike?

A. I think so.

Q. In arriving at the assessed valuation on these banks whose capital stock varied, you must have had in mind some rate; what was that rate?

A. A rate of——

Q. The ratio which the assessed valuation bore to the valuation which you should have taken, do you recall what that rate was?

A. The banks having real estate——

Q. Don't you know?

Defendants' counsel objects to this line of inquiry of plaintiffs on the ground that it is not proper.

Objection overruled. Exception allowed.

“Q. (Mr. Earle) You have referred to the fact that banks own real estate?

A. Yes sir.

Q. You know that the Citizens National Bank did not own any real estate and could not own any under the law?

A. I do not think any of them can under the law.

Q. Don't you know that at the time you made the 1914 assessment on the Port Angeles Trust & Savings Bank of which Mr. Babcock is vice-president that it held no real estate; don't you know that?

A. I expect it did not, no; it may have for all I know, too.

Q. Did you make an effort to find out?

A. No.

Q. But you applied to that bank the same rate based on the capitalization of it that you applied to the other Banks, did you not?

A. No, sir, I don't think so, the same capital stock as the other banks. It is assessed at two thousand dollars, and the other is assessed at three.

Q. Why should you allow them to get off with one thousand dollars less on the assessed valuation if they are all capitalized for the same amount?

A. Why did I do it?

Q. Yes, sir.

A. The bank that had just opened, it did not have anything.

Q. It doesn't make any difference whether they were succeeding or making money, you took those things into consideration; you would not get it by the Statute in that manner, would you?

A. I haven't found out what the Statute is.

Q. Did you ever look for it?

A. I did.

Q. Could you find it?

A. I would not find at what to assess the bank, and that is not the only assessor in the State, either, that hasn't found out. The assessors of your county haven't found it out. No sir, they have not found that out, and many of the others haven't found it out; how to assess a bank, and have it assessed legally, that is a fact. The assessor of your county has not done it."

REDIRECT EXAMINATION

On redirect examination witness says, in making his assessment in Clallam County for the three years of 1912, 1913 and 1914, he was moved by his best and honest judgment, and nothing else. Witness says, that while the assessment on timber lands in Clallam County was raised ten per cent, in 1914, real estate in the City of Port Angeles was raised forty per cent, that is, taking the whole town into consideration. Some of the property in the business district was raised from two to three hundred per cent. The farm lands in 1914 were raised twenty per cent., over 1912. The total increase of assessment for 1914 over 1912 over the whole county was twenty per cent.

Q. What in unimproved lands?

A. I will have to make an explanation here. I will state first the valuation of timber lands was raised ten per cent according to my figures. Now, in 1914 when the cruise of the County was completed it had shifted a number of acres which were formerly called wild land and put them into the timber land class. Because the cruise showed that they were timbered acres rather than wild land; in other words they didn't have over three hundred thousand feet per forty acres. That reduced the unimproved, and threw the acreage into the timber land class, and with that the timber only

shows an increase of ten per cent, and compared with the year before it would show that the unimproved would not have increased any compared with that, because the increases are less.

Q. You have already given the raise on the city property?

A. Yes, sir; also city and town lots. It would include the City of Port Angeles, the town of Sequim, and wild cat lots scattered promiscuous around Port Angeles and down towards Clallam Bay, and the lake. Them added together show an increase of thirty-eight per cent for city and town lots. The increase on city and town lots was thirty-eight per cent.

Q. How did you assess the real estate of the bank?

A. It is assessed like other classes of property.

Q. Are the banks in Port Angeles, in Clallam County, possessed of real estate?

A. Oh, yes, sir. The Clallam County Bank has it carried on the books in their name and I am not quite sure that the other banks carry any property in the bank's name, but I believe it is strictly against the law to do so. It is also against the law for the other banks to carry property except in a small amount.

Q. Do you not know that the bank has a right to carry real estate that is taken in the process of collecting and enforcing the collection of debts?

A. Yes, sir, my understanding is that they all carry real estate. I am not sure that the bank of Clallam carries it, because it is of record.

Q. Do you have any knowledge of the amount of capital of any of the banks that may or may not be invested in real estate?

A. I believe that nearly all of the capital stock of that Clallam County Bank is invested in it."

Q. You have heard the testimony here of these witnesses with reference to this boom that occurred in Port Angeles City in 1912, the winter of 1912, flattening out in 1913, haven't you?

A. Yes, sir; I have heard the testimony.

Q. And that property continued either stable, or

no higher from that time on until March of 1914?

A. I have heard the testimony given here.

Q. Was that your judgment with reference to the value?

A. Was that my judgment? The judgment expressed here?

Q. Yes, sir.

A. That there was a boom?

Q. Yes, sir, and that the values flattened out in the spring of 1913, and the values went back to about what they were before that boom?

A. In a general way, I believe so.

Q. Why did you assess the property at forty per cent more in 1914 than it was in 1912?

A. There was the tail end of that boom was left the first of March.

Q. You just allowed for the tail end of it in the forty per cent?

A. That forty per cent included some new stuff.

Q. And some of it you say that you assessed two hundred and three hundred per cent more?

A. Yes sir; where it was assessed for one hundred dollars I raised it that much.

Q. As a matter of fact, this first law suit had been begun, had it not, before you made your assessment for 1914?

A. I think not.

MR. EWING: It began May 29th, 1914.

Q. (Mr. Peters) When did you make your assessment, 1914?

A. The first of March, of course.

Q. You made your assessment as of the first of March, but when did you turn your rolls over to the Board of Equalization?

A. I turned the rolls over to them the first day of August.

Q. The rolls were not completed until the first day of August, 1914?

A. I would not say as to that; they may have been completed some time before that.

Q. When were they completed?

A. I don't remember.

Q. As a matter of fact, this suit was begun in March of 1914, wasn't it?

MR. RIDDELL: May 29th.

Q. Had there been any more increase in the value of farm lands from 1912 up to 1914?

A. I could not ascertain that there was much of an increase in farm lands.

Q. Why did you increase every valuation then by twenty per cent?

A. After making this cruise that I have spoken about so often I discovered more acres of farm lands than existed before.

Q. Did the fact that there were more acres of farm lands than you discovered before increased the value of those that you had before?

A. You are speaking about totals; so am I.

Q. In giving those values, you mean merely that you found that there was twenty per cent more of the improved farm lands in that county in 1914?

A. What I mean by that, twenty per cent was taking the assessment of farm lands for the year 1912 and compared with the improved farm lands for 1914 and that it shows an increase of twenty per cent.

Q. In improved farm lands?

A. In favor of farm lands. I did not say I had raised the price of farm lands from twenty to five hundred dollars an acre; I did not mean that.

Q. You do not mean that you took John Smith's improved lands in 1912, and the same lands in 1914, you do not mean that his improved lands were assessed twenty per cent more in 1914 from that of 1912?

A. I adjusted the lands in 1914. I had better reports on the lands than I had before, and it brought about a re-adjustment.

Q. You stated early in this case when these assessments books were spread out before you that your assessment was made directly from the pages of these books, didn't you?

A. Absolutely, myself. I made every assessment myself.

Q. And these books were made up, they were the same in 1914 as they were in 1912?

A. No sir, those books were not in existence in 1912.

Q. They were not?

A. No, they were not compiled at all.

Q. You did not use them for the 1912 assessment?

A. No, not them books that were in court, no.

Q. You do not mean that there was any increase in the valuation per acre of improved lands in 1914 over 1912?

A. There may have been a little.

Q. But what you did mean was that the number of acres of improved lands by the new classification had increased in 1914 over 1912 by twenty per cent?

A. Yes, sir.

Q. What?

A. I said, Yes, sir;—I may have went a little too far; it may not be absolutely, but about very close to it, because there was some changes in the valuation.

Q. You do not mean either then, that the city property was increased by an assessed valuation of forty per cent in 1914 over the assessment of the same property in 1912, do you?

A. Yes, sir.

Q. You do mean that?

A. That is what the figures produce.

Q. You mean that taking the area of lots in the principal business section in the city of Port Angeles, taking the assessment in 1912 and taking the assessment in 1914,—that the assessment in 1914 had increased over the assessment of 1912 by forty per cent?

A. Generally all over the town.

Q. That is what you mean?

A. No, no, no; not along that line; you and I are measuring differently.

Q. That is what I want to get at.

A. You want me to say that I have raised the average percentage of each lot for the 1914 assessment?

Q. I want you to explain what you mean by the increase, by the forty per cent for 1914 roll over the 1912?

A. I have said that the 1914 shows an increase of nearly forty per cent over that of 1912, generally.

Q. Forty per cent of what?

A. Of the 1912 assessment.

Q. That is the lots, in 1914 were assessed at forty per cent more than the same lots were assessed in 1912?

A. No sir, I do not mean that.

Q. What do you mean?

A. That the total assessment of the city of Port Angeles was increased forty per cent over the 1912 assessment; that is general; I am not telling what I have increased any one particular lot in the vicinity. That would be impossible for me todo.

Q. What was the reason for that increase of assessment in 1914?

A. Some lots were increased in assessment.

Q. Why were they increased in assessment?

A. Because I exercised my judgment in putting on that assessment, as I do in other classes of property. It was my judgment that them lots were worth that much more money.

Q. Did values in Port Angeles of city property improve from 1912 to 1914?

A. Did the values increase, do you mean?

Q. Yes sir.

A. I do not suppose they did in one sense, but did in another.

Q. In what sense did they increase, or what didn't they?

A. From a speculative standpoint they increased.

Q. Your assessment in 1914 was based on a speculative increase?

A. It entered into it, yes sir, to some extent it was speculative. It wasn't real by any means. I wish it was."

Thereupon the court announced that, as he had previously advised counsel, he would have to have

the balance of the evidence in the case taken before a referee, as the court was under an engagement to hold a session in California. Mr. A. D. Williams thereupon appointed referee to take the testimony.

Thereupon the parties proceeded with the production of evidence before the Commissioner, A. D. Williams, as Referee.

J. C. HANSEN, a witness on behalf of defendants, testified substantially as follows:

DIRECT EXAMINATION

Witness lives in Port Angeles. This is his fifth year as County Commissioner of Clallam County. Was a member of the Board of County Commissioners and County Board of Equalization in 1912, 1913 and 1914.

Denies the existence of, or any participation on his part in any conspiracy, or combination, as pleaded by plaintiff, or otherwise. Says, if there had been rumors of any such conspiracy he would have known of it, and he knew of none such.

Has resided in Port Angeles twenty-four years.

He is a Republican. Mr. Hallahan, and he, were campaigning at the same time, but separately. Witness say that during his campaign he made no promises or pledges, that any discrimination would be made in equalizing the taxes of the timber lands of the county over other property. Witness was telephoned one evening to come down to meet a gentleman from Portland who stood ready to make a loan to the Elks. Witness was in on the finance committee. He was chairman of the building committee. Witness details his meeting and interview with Mr. Grasty as follows:

"A. Yes sir, for the purpose of building a large building to cover a piece of ground one hundred feet frontage by eighty feet deep. We had a prospect of getting the United States Post Office into that building, and three other stores that are now down in the fire district on Front Street; and I met Mr. Grasty at the Commercial Hotel. In his testimony he claimed that I was present at a meeting that was held in the

back room of the Port Angeles Trust Company & Savings Bank, or whatever the name of the bank is; but I do not remember that meeting. He also claimed that I have said Port Angeles property was assessed at the rate of 20% and that Mr. Babcock contradicted me, saying that it was only 10%; but he was mistaken. I do not remember any such conversation; I do not remember of ever having been in the back room of the Port Angeles Trust & Savings Bank, because I am not doing business in the bank, and if I had been there I would remember having been in that particular back room. But I really don't know the back room. Then Mr. Grasty— All the talk I ever had with Mr. Grasty was in the store, in the balcony, where my desk is. But in the meantime I had several talks with the finance committee and other members, and then Mr. Grasty came to me and asked me if I could give him a letter, why there was such a great difference between the assessed valuations and the prices that we were putting on the property. Then he and I, that is, I made a pencil sketch of about what he wanted, and asked him if that was about the substance that he wanted, and he said, 'Yes sir'. And I think that he came back within a half hour, while I sat down and wrote out on the typewriter, and got him the letter. And then I met Mr. Grasty again, I don't know whether a week or two weeks later, when he came to Port Angeles with Mr. King. I only met him at that time, I don't think over five minutes. He came to town in the morning. I think the steamer landed in Port Angeles at seven o'clock.

Q. At seven o'clock in the morning?

A. In the morning; and I left Port Angeles that same day at noon for Seattle. He came down to the dock with Mr. King and was very pleasant and invited me to go to dinner with him at the Washington Hotel; but I left my card at the Washington Hotel the following day excusing myself, that I could not attend, and that is the last that I saw of Mr. Grasty, except— Oh, there is one more thing. He stated on the stand that he had received no telegrams from home of any

kind. Now then, he did telegraph to Mr. Tom Trumbull, and Mr. Trumbull was out of town and I answered the telegram, and in the telegram I stated that Mr. Trumbull——

MR. PETERS: We object to that.

Q. (Mr. Frost) Have you a copy of that telegram?

A. I have got it right here. He repeats the telegram in his letter here. He says, "In reply to this I received the following from J. C. Hansen, of Port Angeles: "Trumbull out. If you have a proposition without stringing us we are ready to do business and take the matter up anew". For that he wanted an apology afterwards. And I think he repeats the same thing in a telegram, in a night letter to some one here: "Your day letter of yesterday received. Am sorry if you and others are laboring under the misapprehension that I am stringing you in regard to Elk building bonds, or any other business pending in Port Angeles."

Q. (Mr. Peters) What was the date of that last telegram?

A. June 10th.

Q. Of 1914.

A. That is the only time we ever met. There is no other year connected with Mr. Grasty. The reason I telegraphed about stringing us was because he always found an excuse and never came through with the money.

MR. PETERS: I object to what your reasons were as being incompetent.

(Telegram submitted to Mr. Peters)

MR. PETERS: No objection.

(The telegram referred to is marked defendant's exhibit "30" and received in evidence.)

MR. FROST: We offer this letter in evidence.

MR. PETERS: We have no objection to this letter of June 10, 1914.

(The letter referred to is marked defendant's exhibit "31" and received in evidence.)

Q. In Mr. Grasty's testimony he says, "I asked Mr. Hansen if he would please explain to me the wide

difference between the actual value of Port Angeles real estate and the assessed value, and Mr. Hansen stated to me, "Mr. Grasty, we make it our business here to soak the outside fellow, and the fellow that has got the more money, and with our local people we keep these assessments down. We have made it a rule to keep the assessments down, the taxes of Port Angeles property." He said to me, "We have a lot of timber standing in this country, owned by eastern interests." And he said, "It is our purpose to get after those fellows and soak them heavy taxes so they will begin operations, and it will all benefit Port Angeles." What have you to say regarding any such purported conversation?

A. That is nearly all false, absolutely false.

Q. What, if any, conversation did you have with Mr. Grasty concerning non-resident owners of property, and the big timber interests?

A. Well, I will explain. I am hard to catch. I am very busy all the time, and a man catches me generally about five minutes and seven minutes, and ten minutes, and all the talk we have had was about the proposed building, because all of his business was with the finance committee, and he came rushing up to me in the office whenever he could catch me, and was after that letter, and then in order to get rid of the matter as quick as I could, because, like I told you, I have to go out to different places here and there at all times, and I drafted that while he was right in my presence and the matter was disposed of, and I had really forgotten all about it. Neither did I mention to Mr. Babcock at all that I had written such a letter until I heard it was here in Court the other day, or to Mr. Hallahan. There was never no conversations between us that I had given any letter to Mr. Grasty. That is as little thought as I had ever given the matter.

Q. Regarding this alleged conversation between you and Mr. Grasty concerning non-resident property owners and the large timber interests in Clallam County?

A. That was never mentioned.

Q. It was never mentioned?

A. No sir; we did not even have time to mention it.

Q. What was your purpose or object in writing this letter to Mr. Grasty?

A. Entirely for the purpose of receiving the money for the proposed building. We all did all we could, every one of us that was interested; and it would have been a good loan if he could have made it.

Q. Mr. Hansen, was it ever suggested or requested of you or any member of the Board of Equalization, or any assessing officer of Clallam County that you know of, or by any citizen, or organization of Clallam County, that you would assess or equalize the value of the lands of these plaintiffs, or any of the timber lands of Clallam County, at a higher or greater proportion of its value than the property situated within the city of Port Angeles, or the Eastern portion of Clallam County?

A. To assess timber land higher?

Q. To equalize the timber lands at a higher proportion of its value than the property situated in the City of Port Angeles, or the eastern end of Clallam County?

A. Such request was never made. I would like to make one more statement regarding the proposed building.

Q. Go ahead.

A. When that matter started up the lodge members pledged themselves to raise amongst themselves fifteen thousand dollars, and then we employed an architect and got out the plans, and it was found that the building would cost about forty thousand, thirty-eight thousand, I think, was the estimate of the architect; and so we would only need to raise twenty-five or thirty thousand dollars. But we thought that we would take the burden of raising the fifteen thousand dollars off from our members, because we figured that it would take about five thousand, I think it was, to pay for the furnishing of the lodge rooms, and we thought then that since Mr. Grasty was there with

plenty of money, we would try him for forty thousand dollars; Then we came down to thirty thousand, and finally we dropped clear down to twenty thousand; and we did not get the money.

MR. FROST: You may cross examine.

MR. PETERS: No questions.

(Witness excused.)”

FRANK LOTZGESELL, a witness produced by the defendant, testified as follows:

DIRECT EXAMINATION

Has lived at Dungeness, Clallam County, forty-seven years; is a farmer; was County Commissioner of that county from the year 1911 to 1914, both inclusive; is a Republican. Witness has acquaintance with Mr. Hallahan, Mr. Hansen, Mr. Babcock and Mr. Erickson. The latter was on the Board with him two years. Witness has been more or less active in politics.

Witness has never been connected with, and never heard of the existence of any such conspiracy or confederation as pleaded by plaintiff or otherwise.

Q. Had there been such a conspiracy or confederation as I have referred to what would you say as to the probability that it would have come to your knowledge?

A. I certainly think it would.

Q. State whether or not any such conspiracy or understanding or agreement as that I have referred to in fact existed.

A. It never did.

“Q. Mr. Grasty has testified regarding a conversation with you as follows: Q. Did you have any talk with Mr. Lotzgesell with regard to the values?

A. I had a talk with Mr. Lotzgesell regarding the values of property in Clallam County, and in Port Angeles, and he informed me that taxes were higher outside of Port Angeles than in other places in Clallam County, that the taxing business was in the hands of Port Angeles politicians. He stated to me that they were assessing the timber people at a stiff rate of interest and that they had been protesting and he expected

some trouble from that source. I asked him if he would mind giving me a letter covering this difference from his view point, between the assessed and the real value of the property, and he promised me that he would, and that he would bring it into Dungeness the next morning. This was on Saturday night. At ten o'clock in the morning Mr. Lotzgesell had not put in his appearance, and I telephoned his home, and he replied over the 'phone by saying: "Mr. Grasty, I have decided that I cannot give you that letter that I promised you", and I asked him why, and he stated that he was afraid of getting himself into trouble; and that there were certain things going on that he could not talk about and that somebody was likely to be gotten across a barrel." And he would explain to me what he meant when he saw me in person, and he could not talk to me over the phone." Mr. Lotzgesell, will you state your version of such conversation as you had with Mr. Grasty, if any?

A. That statement of Mr. Grasty's is absolutely false.

Q. Just what did happen between you and Mr. Grasty?

A. Mr. Grasty called me up from Dungeness over the phone and told me that he wished to see me on some very important business, that he could not talk over the phone, and wanted to know how he could meet me. I told him I would come in that evening and see him.

Q. Is this the first time that you came in contact with Mr. Grasty?

A. Yes, sir; that is the only time I ever met Mr. Grasty.

Q. Did you meet him personally at the time he called you up?

A. Yes, sir; I went out and met him at the hotel.

Q. He called you up first, did he?

A. Yes, sir.

Q. All right, go ahead.

A. I went to Dungeness and he was waiting for me, and he introduced himself, took me up to his room

in the hotel, and he told me that I owned a couple of lots at the head of the Bay in Port Angeles, close to the Earles' Mill, and he would like to buy them of me. I told him that he was mistaken, that the lots belonged to my brother, that I owned no lots there. I said, "You can call him up over the phone, if you want to". He said very confidentially that he was looking up a big mill site for Merrill-Ring Lumber Company, and he didn't want anybody to know anything about it, and for that reason he did not want to call him over the phone. He told me also he was negotiating with the Elks to make them a loan and showed me a statement that he had from Mr. Lutz and Mr. Christensen in regard to the value of property, and asked me what I thought about it. I kind of laughed and told him I thought they were pretty high on Port Angeles property. He asked if I did not think Mr. Lutz and Mr. Christensen were very conservative business men. I told him I thought they were, but they and I did not agree on the prices of Port Angeles property. He said he did not know how he would make a loan unless there was some showing made to his firm that the property was assessed so low. He asked me if I could not give him a letter of that kind. I told him I did not see how I could; I did not think that the property in Port Angeles was worth any more than it was assessed at, that I did not feel like I would take the whole town for the assessed value.

Q. What is the last?

A. I told him I did not think I would take the whole town at its assessed value. He asked me if the fact of this large mill coming there, if I did not think I could find some way by which I would give him such a letter and I told him if I did I would have to do it against my own judgment. He made lots of suggestions of development that he knew was going to be there. He urged me very strongly to try and help the Elks out. I told him if I could think of any means by which I would give the letter I would call him up on the phone or see before the boat left. About ten o'clock the next morning I called him up and

told him I did not see how I could give him that letter. He said he was very sorry, that it would help him in his business down there. That is the last I ever saw of Mr. Grasty, or heard of him, until I saw him in the court room.

CROSS EXAMINATION

BY MR. EARLE:

Q. Mr. Lotzgesell, I understood you to testify at first that those statements, of Mr. Grasty with reference to his conversation with you were absolutely false, is that right?

A. Yes, sir; in regard to the political ring, and politics running the assessed value of the County; it is absolutely false. I never mentioned politics, or a political ring to Mr. Grasty, nor he did not to me.

Q. Then it was that part of his statement relating to a political ring that you intend to say was false?

A. Yes, sir.

Q. You did, however, have quite a conversation with Mr. Grasty with reference to the assessed valuations, did you not?

A. Not so much to the assessed valuations of property as his assessed valuation practically ran to the Elks' property. That is about the only assessed valuation that he discussed with me.

Q. You stated that you thought the assessments of Port Angeles property, were all right, did you?

A. Did I state what?

Q. Did I understand you correctly in stating to Mr. Grasty that you considered the assessments on Port Angeles property were all right?

A. I told him I thought they were plenty high enough; I did not see how they could be any higher in my judgment.

Q. Did you consider that the property in the entire County was being assessed at the same ratio of its real value?

A. I thought it was as near as could be, as near as we could get at it.

Q. And you considered that the property gen-

erally in Port Angeles was being assessed at the same rate with Sequim and Dungeness acreage, for instance?

A. I thought so.

Q. You think that the agricultural property and the urban property there were assessed at the same ratio?

A. I believe they were, as near as practical, as near as we could get at it.

Q. And this property was assessed at the same ratio as the timber land?

A. I think they were.

Q. Mr. Lotzgesell, are you a timber man; have you had any experience in the timber business?

A. No, sir, I am not a timber man.

Q. Have you ever bought and sold any timber?

A. Not very much.

Q. Had you considered yourself an expert on timber values?

A. No, sir.

Q. While you were sitting on the Board of Equalization, how did you arrive at the value of timber lands from which you were to put your assessments for taxation purposes; how did you arrive at that value?

MR. FROST: We desire to note an objection on the ground that you are inquiring into the mental processes employed by a *quasi* judicial officer.

MR. EWING: And on the further ground that the valuation of timber lands was not made by the Board of Equalization.

THE COURT: The objection is overruled.

MR. RIDDELL: In order to save time the court will note an exception to every ruling of the court sustaining or overruling an objection to testimony.

THE COURT: Yes.

A. I suppose, by using our best judgment; that is my judgment.

Q. Well, to use your judgment you must have had some basis of computation. You say you used your best judgment with reference to those timber

lands; now, how did you arrive at the value at which those lands should be assessed?

MR. FROST: I make the same objection, because the Board of Equalization does not make assessments.

MR. PETERS: It is understood that your objections follow each one of those questions on the same ground.

THE COURT: The objection is overruled. Exception allowed.

MR. PETERS: All objections may be overruled and exception taken, unless we desire to argue them.

A. I do not think I could give any other answer. I used my judgment, what I thought they were; that is all.

Q. Were you a member of the tax payers league, Mr. Lotzgesell?

A. I was.

Q. And you were acquainted with the purposes for which it was organized?

A. Yes, sir; I think I was.

Q. Is it not true, that the taxpayers league was organized, among other things, for the purpose of securing a raise in the assessment of the timber lands?

A. No sir, that is not true.

Q. Do you mean to say that in their meetings and their representations to the Board of Equalization they did not ask for and demand a raise in the assessment of timber lands?

A. Not at their meetings that I remember of; never at their meetings that I remember of.

Q. Did they anywhere?

A. They were down to the Board of Equalization at one time and their conversation was with Mr. Hallahan. I do not know what it was. I did not hear it.

Q. Were you a member of the Board of equalization at that time?

A. Yes, sir.

Q. Did you hear what took place at Board Meetings?

A. I do not think they discovered much in the Board Meeting.

Q. Just leave Mr. Hallahan's part to Mr. Hallahan and ask him the questions direct.

MR. RIDDELL: Don't scold him.

MR. FROST: We desire to enter an objection to this question. The Board of Equalization is a board of record, and the record is the best evidence of any transactions or protest or actions that might have been taken either by the Board or before the Board.

Q. (Question read)

A. They were discussing the general taxation, I think, of all the property. I think, principally, that the farm property was assessed too high, if I remember rightly.

Q. As compared with farm property were they not demanding that the timber assessments be raised?

A. They may have been; I would not state positively that they were not.

Q. Don't you know that that is what happened?

A. That they were demanding a raise on timber lands?

Q. Yes, sir.

A. And nothing else? Just demanding a raise on timber lands.

Q. Were they demanding a raise of timber assessments?

A. They may have been; I would not say they weren't.

Q. You are a member of that organization; don't you know what the purpose of it was?

A. Yes, sir.

Q. Wasn't that the only purpose of the organization?

A. No sir, it was not.

Q. What did they organize for?

A. To try and hold down the assessed value of the County, of the levy.

Q. The "assessed value of the County", do you mean they were trying to hold down the assessed value of the west end of the County?

A. Of the whole county; that is my impression of it.

Q. Will you step down to the map, Mr. Lotzgesell. (Witness stepping to the map) In a general way, you are familiar with these assessment rates, are you not; for instance in this zone here. This states the assessment on the fir, spruce and cedar, and this is on the hemlock.

MR. RIDDELL: Name the zone.

Q. Referring to zone No. 1 on the map, on the Straits zone, on plaintiffs' exhibit "A", at the meeting of the Board of Equalization, protests were made by these plaintiffs, were they not, asking for a reduction of these rates of assessments?

MR. FROST: We object to the question. The record is the best evidence of what happened before the Board of Equalization.

Q. (Mr. Earle) This leads up to the point for which I want to make an inquiry. Those protests were made, were they not, for the reduction of the rate?

A. On the Straits zone?

Q. Take zone No. 2, in which plaintiffs timber is located; an application was made, was it not, for the reduction of this rate?

Q. For the rate on that particular zone?

Q. The rate on the plaintiffs' timber, wherever it might be located?

A. I believe there was.

Q. And in 1914 you raised the rate in this zone, did you not, from seventy cents on fir to eighty cents?

A. No sir.

Q. In 1914?

A. No, sir.

MR. FROST: He is not the assessor.

Q. (Mr. Earle) I should have said that raise was made and you passed upon the plaintiffs' protest and request for a reduction, did you not?

A. Yes sir.

Q. In deciding whether the reduction should be granted to the plaintiff, how did you arrive at your value on this timber?

MR. FROST: We object on the ground that it is inquiring into the mental processes employed by the assessors office.

Q. (Mr. Earle) How did you arrive at that value?

A. The assessor, I suppose, arrived at that value, and we sanctioned his judgment.

Q. The assessor had placed a valuation of eighty cents on it and the Board sanctioned the valuation of the assessor?

A. We did not make any change.

Q. Did you make any tabulation of any figures regarding the value of this timber in deciding whether that cut should be allowed?

A. No sir, I made no tabulation.

Q. You took the rate as had been placed on that by the assessor, and considered that that was all right?

A. Yes, sir.

MR. FROST: We desire to enter the further objection that this is not proper cross examination.

Q. (Mr. Earle) Coming down to this zone No. 4, as it appears on this same map, the assessor had made a raise there of from sixty to seventy cents on fir, and the plaintiffs appeared and asked for a reduction, did they not?

A. I think they did ask for a reduction on the whole. I do not know as they made any difference in any of the zones.

Q. And in passing upon their petition for a reduction how did you arrive at what would be the fair value of plaintiffs' timber in this zone?

MR. FROST: It is understood that the objections go to all this line of testimony?

MR. EARLE: Yes, Mr. Frost, the whole line is objected to by the defense on the same ground as heretofore urged.

A. We thought that the assessor's figures were about right.

Q. Did you go into the value of the logs or lumber; or any of those features to decide whether there should be a reduction or not?

A. I do not think we did.

Q. You found the assessment made by the assessor to be this amount, and you passed upon it, and sanctioned it as all right?

A. Yes, sir.

Q. You upheld the assessor's judgment in the matter?

A. Yes, sir.

Q. Did you make any inquiry into the location of the lands or the grades of the timber or the accessibility or topography or any of these features in passing upon this petition for a reduction?

A. No, sir.

Q. And would your answers be true also of the case of the Ruddock and McCarty timber located here and marked in yellow?

A. Yes, sir.

Q. And your answer would apply also to zone No. 3 as it appears here on zone number five?

A. Yes, sir.

Q. The Board of Equalization knew, did it not, in 1914, that the timber had been raised somewhere around 14%, the assessment?

A. Yes, sir, We knew it had been raised in these zones those figures.

Q. And knowing that this timber assessment had been raised and that the plaintiffs were asking for a reduction in their assessment, did you consider in your own mind whether there had been an advance in the market value of timber lands?

MR. FROST: We do not understand the reason for asking these questions when the court yesterday explicitly ruled them out of order. You were asking what the operation of his mind was, and you used the word "mind", and it is simply encumbering the record with a lot of useless stuff. What mental processes he used, what reasons were in his mind, the Court yesterday to a similar question asked by Mr. Peters sustained the objection.

MR. EWING: I want to add to the objections that we have already made that an inquiry into the

mental processes of the members of the Board of Equalization is not a proper subject for the consideration of the Court for the reason that the Board of Equalization is a quasi judicial tribunal, and the members thereof are subject to the same privileges and immunity as a Court under the law.

Q. (Question read)

A. I did not pay any attention to that.

Q. Was there any discussion by the Board as to whether there had been an increase in the market value of timber lands since 1912?

A. I can't recollect; I can't recall.

MR. PETERS: I asked him if there were any investigations made by the Board as to the grounds on which the timber was raised in 1914, the assessment of it over 1912.

MR. FROST: We made the same objection on the same grounds.

Q. If there was an investigation made by the Board of Equalization in 1914 of why the assessor raised the assessment of timber for 1914 over the assessment of 1912?

A. I cannot recall.

Q. (Mr. Earle) Will you explain the method of assessment and equalization by zones, as those zones appear on the map?

A. Can I explain the method of assessment and equalization?

Q. Yes, sir.

A. No, sir, I cannot.

Q. Have you ever been able to explain it?

A. I don't know as I could explain it."

RE DIRECT EXAMINATION.

On re-direct examination witness says all classes of property in Clallam County were raised in 1914 over 1912. The raises were general throughout the whole county.

Q. What are the facts with reference to all protestants who appeared before the Board in either 1912 or 1914 being given a full free and fair hearing?

A. They all had a fair hearing and free.

Q. Was anybody denied a hearing, or shut out?

A. No, sir.

Q. What official records had the Board of Equalization before them while sitting as a Board of Equalization?

A. They had the assessors records.

Q. Of what did those records comprise?

A. The assessments of the county.

Q. And what else?

A. All the property in the county I suppose.

Q. They had the cruise books there, didn't they?

A. Yes, sir, they had the cruise books.

Q. Both the timber cruises, and the land cruises?

A. In 1914, most all the land cruises was there, I think. but not in 1912."

Witness says that the Board of Equalization in 1912, consisted of Messrs. Babcock, Hansen, Erickson, Hallahan, and himself. Mr. Babcock, Mr. Hansen and Mr. Hallahan came up for re-election, and the three of them elected. Mr. Babcock Mr. Hallahan and himself, ran at the next election. In 1914 Mr. Babcock was elected and Mr. Hallahan and the witness were defeated.

Witness thinks the Tax Payers League was organized in 1912, and he is still a member of it. He thinks that the object of the Tax Payers League was to hold down assessments and taxes in Clallam County, and to confer with the Board of County Commissioners to hold down the taxes in every way they could. None of the objects of the tax payers league were directed against, or in favor of special classes of property in Clallam County.

In 1914, the assessment was higher; the levy was lower; so the taxes actually paid were less in 1914 than in 1912.

On re-cross examination witness admits the levy was less, because they reduced expenses, but also because the assessed valuation was higher.

"Q. Wasn't because they cut down on expenses?

A. They may have cut down on expenses some.

Q. Take your own road district in the east end

of the County, didn't they cut on the levy or appropriation?

A. Yes, sir.

Q. To the limit?

A. No, they did not cut it to the limit.

Q. They made a very deep cut in the amount of money to spend in the east end of the district?

A. Yes, sir.

Q. And they made a deep cut in the amount of money to be spent in the road district No. 4?

A. Yes, sir.

Q. And they made a large cut in the amount to be spent in the road district No. 3, didn't they.

A. I think so.

Q. And they made cuts in the various offices of the County?

A. I don't hardly think so; whether they made much of a cut in the offices.

Q. Wasn't it the entire program of the Board of County Commissioners at the October meeting directed to economy and a cut in the matter of expenses?

A. Yes, sir, every place they could.

Q. And they made the levy less, didn't they?

A. The levy would have been less anyhow, because I do not think they raised so much money.

Q. That was one of the main reasons why the levy was less, wasn't it?

A. That was one of them."

Witness further states that the assessor raised the assessment in 1914, but the assessor never explained to witness as a member of the Board of Equalization in 1914, why the assessment was raised. The Board did not ask for any explanation. The Board did not consider the reason for the raise. Witness does not think that the only reason for raising the assessment in 1914, was that the levy might be reduced. Witness always contended that it made no difference what property was assessed at so long as it was equal among the county.

"Q. So long as you were on the Board of Equalization you never took into consideration whether the

assessment made by the assessor was higher than it ought to be compared with the fair market value of the property assessed, or was lower than it ought to be?

A. As long as it was equal.

Q. As long as one piece of property was assessed on the same basis as the other?

A. That was the idea.

Q. And you never considered that there was a feature about it at all, whether property as a class was assessed higher than it ought to be or whether property as a class was assessed lower than it ought to be, did you?

A. In different classes, you mean?

Q. You never considered whether farm property was assessed higher than it ought to be assessed, as a Board of Equalization?

A. As long as it was all assessed at the same rate it would make no difference.

Q. As long as all the farm property was assessed on the same proportionate basis you never considered whether farm property as a class was assessed higher than it ought to be or not?

A. As long as the farm property was at the same rate as the timber or the town property we thought it made no difference; at least, I thought it would make no difference.

Q. How did you find out what was the same proportionate rate for farm property and timber property?

A. Used our best judgment.

Q. What comparison did you use; how did the Board determine that farm property at a certain sum per acre was equalized with timber lands at eighty cents a thousand, for instance?

MR. FROST: We renew our objections to that.

MR. PETERS: I consider that it is running all the way through here and the stenographer will please take it down that counsel for the defense renews the objection on all the grounds heretofore stated.

MR. EWING: And on the further ground that the witness has already answered.

Q. (Question read)

A. I could not give any other answer than that we used our judgment; at least I used mine.

Q. You won't undertake to say that the Board of Equalization adopted any measure or entered into any discussion, or any investigation as to how or why the assessor raised the values on timber to a certain rate in 1914 over 1912, or raised the assessment on farm property in 1914 over 1912, or on city property?

A. I could not say any other way, but I supposed that he used his best judgment.

Q. And you all O. Ked it?

A. Yes, sir.

Q. And made no investigation of it, did you?

A. We investigated to see if we thought it was equal.

Q. How did you do it?

A. By going over it.

Q. Take any piece of property and tell me how you found out it was equal?

A. By looking at the books. That was our judgment.

Q. You looked at what books.

A. The assessors books.

Q. You mean those big volumes that he had in here?

A. We did on the farm property.

Q. You looked in those volumes that we had in here?

A. Yes, sir.

Q. And when you looked at them what did you do?

A. Compared one piece with another.

Q. How did you compare it; tell us please.

A. By the amount that he had assessed upon it.

Q. Well, just take any two farms that come up to your knowledge and tell me how he did it.

A. We looked at it and saw what my farm was assessed at and what Dick's farm was assessed at.

Q. Take those two instances, what was your farm assessed at?

A. I cannot recall now.

Q. What was Mr. Dicks farm assessed at?

A. I cannot recall.

Q. How did you compare the two?

A. By our judgment on what we thought they were worth.

Q. And did you compare the assessment of the farm land with the assessment on the timber land?

A. It would be our judgment on what we thought it was worth, I suppose.

Q. And what rate did you consider your farm assessed?

A. At what rate?

Q. Yes, sir.

A. At about fifty per cent.

Q. About what?

A. Something around fifty per cent.

Q. Fifty per cent of what?

A. Of its value.

Q. What was its value?

A. When?

Q. For 1914.

A. I would think it would be in the neighborhood of twenty thousand dollars.

Q. What was it assessed for?

A. I think it was assessed for something like nine thousand.

Q. In 1914?

A. I think so.

Q. What was the case in 1912?

A. I can't recall."

Witness then gives a description of his farm, situated in sections 2 and 4, in Township 30 north, range 4 west. He says he has 139 acres cleared. Witness told Mr. Keeler, a real estate man, that he would take thirty thousand dollars for the land, if he could find anybody fool enough to give it. His land is two hundred and nineteen acres, of which one hundred and thirty-nine acres are cleared. Witness says that all the property in the county is assessed at the same ratio of its real value. He knows of no exception to this.

Witness is a member of the Board of Equalization was familiar with the assessments on the banks of Clallam County. He could not say that he was familiar with the rate at which they were being assessed. "Mr. Hallahan said, that the Banks held property, and it was out of their capital stock, or something of that kind. I could not say that. I could not answer that question." Witness made no inquiry into the assessment of the Banks of Clallam County. The banks, he says, were assessed at the same rate; that is, one bank, the same as the other. Witness could not say that he considered that rate to be the same as the rate on other classes of property.
as the rate on other classes of property.

"Q. In going over those rolls as you say, to determine whether they were all being assessed at the same rate, did you look at the assessments of the banks at all?

A. Yes, sir.

Q. And you considered they were being assessed at the same rate as other classes of property, did you?

A. I could not answer that question intelligently.

Q. Can you answer it at all?

A. Because if the banks have a right to invest in other property they were assessed for that other property; I could not say that they were assessed.

Q. Did you go into that?

A. No.

Q. In going over the assessment of a bank you turned the page and went to something else, is that right?

A. Yes sir.

Q. Did you examine all classes of property in the same manner to see whether the classes of property were being equalized at the same rate?

A. The Bank property I did not know much about.

Q. Did you examine the assessment of shingle mills in the same manner?

A. Yes, sir, compared one with the other.

Q. Did you examine the assessment of the stocks of goods in the same manner?

A. Practically.

Q. And you examined the assessment of agricultural land in the same manner?

A. By comparison, yes, sir.

Q. And timber lands in the same manner?

A. Yes, sir.

Q. Did you ever ask the assessor at what rate, what ratio of the real valuation the Banks were being assessed?

A. No sir.

Q. Did you ever ask him at what rate the stocks of goods were being assessed?

A. I cannot say as I ever asked him direct.

Q. Did you ever ask him about agricultural lands?

A. No, sir.

Q. Or timber lands?

A. No, sir.

Q. Then how did you arrive at your conclusion that the rate of taxation, the rate of assessment, was the same on all classes of property?

A. By using my judgment.

Q. By using your judgment?

A. Yes, sir; that was my judgment of it.

Q. And as I understand you, you used your judgment in this matter of the assessment of Banks by turning over the page and going on to something else?

A. I left that to the assessors judgment.

Q. How?

A. That was the assessor's judgment.

Q. What I want to get at is when it came to the Banks you took the assessor's judgment did you?

A. Yes, sir; his judgment ought to be better than mine on that, I think.

Q. When you came to the assessment of stocks of goods you took the assessor's judgment, did you not?

A. Yes.

Q. When you come to the live stock you took the assessor's judgment?

A. I used my own too, on live stock. I am acquainted with the value of live stock.

Q. In that particular instance you used your own judgment also, did you?

A. Yes, sir.

Q. You took the assessor's judgment, did you, in the case of timber lands?

A. Mostly.

Q. What else did you take?

A. My own judgment too.

Q. Did you have any knowledge of the value of timber, or lumber, or logs, on which to base the assessment?

A. I think I have got a little knowledge.

Q. How is that?

A. Some.

Q. What was your experience in that line of business, did you have any?

A. I bought a little timber and sold a little.

Q. Where did you buy timber?

A. I bought some up close to Sequim.

Q. Did you ever buy any in the west end?

A. No, sir."

REDIRECT EXAMINATION BY DEFENDANTS.

Witness says that when there was a difference of opinion on the Board of Equalization as to the valuation of property, they all talked it over, and argued on it. They went up to Sequim once, he thinks, and looked over the property; thinks the Board also made a trip of inquiry to Port Angeles and looked over the property there in 1914. They went down Front Street, and up the hill through the regrade district, and back down on First Street, and to the court house. There had been protests made about the assessments being too high. The assessor's figures were not changed very much. There may have been a few instances, but the witness does not recall of any. "Q. (By defendants' counsel) You concluded that the assess-

ments made by the assessor were as nearly correct as could be made? A. Yes, sir."

RE-CROSS EXAMINATION BY PLAINTIFFS.

Witness does not think the Board made any change in the figures of the assessment after this visit; does not think they made any change in the assessment on timber lands from the assessor's figures. They did not go out through the timber and look at that after the protests were made.

"Q. On what basis of valuation were the assessments of 1912 made, on the full value of the timber, or any percentage of the value of the property?"

A. I could not say whether it was made on any particular basis.

Q. On what basis of valuation was the assessment made for 1914, on the full value of the property, or on a percentage of the value of the property?"

A. I could not say that it was any particular basis, the full value, or half, fifty per cent.

(Witness excusid.)"

J. I. KEELER, a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION.

Lives at Sequim. Is in the real estate, insurance and brokerage business there, and has been so for twelve years last past; has maintained an office there for three years. Prior to that time he had a hotel, and did the real estate business from the hotel office. Had bought and sold property in Sequim on commission for himself and others. Is familiar with the values in the town of Sequim, and within a radius of eight miles.

Witness says he was in the court room and heard Mr. Lotzgesell testify regarding the offer made him for the purchase of his place. He then details the circumstances of his offer:

"A. Mr. Erickson came to my office and said that he had a client who wished to purchase a large farm in the Dungeness bottom. I told him we had one that I considered was a fair buy, naming the Ward

estate, consisting of one hundred and forty-nine acres, which he could have at fifteen thousand dollars.

Q. Were there any improvements on that place?

A. Yes, sir. The price of the place was twenty thousand dollars, together with all the improvements, nineteen cows, hay, and crop in the barn, and everything, which was valued at five thousand dollars. I wanted to take him down and look the place over. But he said he would go down himself and look it over. He did so, and came back, and said that he would like to get the Lotzegell place. I told him that he could probably get a better price out of Mr. Lotzegell than I could, and as far as the commission was concerned, between him and Mr. Lotzegell, either I did not care, but he could go ahead and get it. He said, "No, you are doing business here, and I would rather get it through you. You get a price on it." "He says 'I don't know as Frank would give me a price on it.'" I told him "all right." I told him I would call Lotzgesell up and tell him I wanted to see him, and asked him over the phone if he would sell his place. He said, "No, he did not care to sell it." Then I went down to see him some days afterwards and tried to convince him that he could sell his place for a great deal less than it was reputed to be worth and loan his money out and make more interest on it than he did with the farm. He said, that was probably true, and that he was not a banker, that he was a farmer; that he had talked it over with his family, and he knew what he could do with the farm, and he would stay there. I reported to Mr. Erickson. He said, "Get a price on it, without regard to what his price is. Don't jew him down; get a price." I went back to Mr. Lotzgesell, and I says, "Would you take twenty thousand dollars for your place?" And he says, "I dont' want to sell it, that is probably as much as it is worth, but I don't want to sell it." I says, "Will you take thirty thousand dollars?" He says, "If you can find anybody that is damn fool enough to give it, I will." I reported to Mr. Erickson that it

could be bought for thirty thousand, dollars, and he did not take it."

Witness says K. O. Erickson was a former member of the Board of County Commissioners, and of the Board of Equalization.

Witness met Mr. Grasty, and detailed the following interview with him.

"A. There was nothing particular happened between Mr. Grasty and myself. The majority of our conversation was along social lines and bore on the conditions of the country. He told me that he was representing a large financial firm in Portland that were desirous of loaning money. I told him that we would like to interest him in some farm loans there. He said that he would probably be able to arrange matters so that we could work with him in that regard, and I talked about it. He asked me about values. He said that he understood that the land there was worth three or four hundred dollars an acre. I told him such was not the case; that the highest improved land was only worth two hundred dollars an acre, and very little of it worth that. That was about the extent of our conversation in regard to the Sequim Country; and I accompanied Mr. Grasty around for a drive through the country, and down to Port Angeles."

Witness says Mr. Grasty did not want any letter from him. Witness did not tell Mr. Grasty that the timber interests were being taxed in the county too high, or that they were unduly increasing the assessment on timber property in the county, and unduly lowering it on other property in the county for that purpose.

Witness was, and is, a member of the Tax Payers League, was about the first man that signed it. He gives the purposes of the League as follows:

"A. Educational, principally. The principal idea was to educate the people in regard to the manner in which taxes were levied, and the degree to which it was necessary to raise taxes, and why it was necessary to have such an enormous amount. The ordinary individual throughout the County was very ignorant

in regard to the taxation question. All of us were, and we thought that the county was exacting a great deal of money, and we wanted to know why they were, and what it was being spent for, and we organized for that purpose. And in order to get data we appointed committees to confer with the County Commissioners to see if there could not be some sort of retrenchment gone into, if we could not reduce the taxes, not necessarily the valuations, but the levies. It did not make any difference what it was, so that it made our actual cash paid for taxes less. We figured that we had reached the point in the taxation question where there should be some retrenchment along all lines. That was what it was organized for.”

Witness says that it was never the purpose of the League, nor there was never any attempt made by the League to unduly increase, or decrease, the assessment on a given kind, or character, or any particular property in the county. The League was never organized or used in support of any particular political candidacy. It never announced any policy.

The only real estate men in the town of Sequim are J. A. Adams, and S. A. Greenfield.

The County Board of Equalization in the years, 1912 and 1914, came to Sequim. Witness conferred with them both times. Witness went around with them.

“A. Some of them came into my office and told me what they were there for and said that they wanted to familiarize themselves with the conditions that existed there relative to the valuations of the different properties, some of which had been—not exactly protested, but complained of, and asked me about where certain lots and things were. I told them I would go out and show them. I went around and showed them some lots that have alleys back of them, and some have not, and some have streets graded in front, and some are out in the woods, the same as in Port Angeles. They went around and made a personal investigation of those certain instances, that their atten-

tion had been called to; and also looked at the improvements."

The Board did not talk with witness about values, but looked over the property and talked among themselves. Witness told them he thought the taxes were too high on certain of his own lots on account of conditions which he submitted to them, giving them the reasons for it. Witness pointed out to them the small area of the town, and secondly, the great value of the immediate corner lots; There is only one corner in the town, and the rapidity with which values decreased as you went away from the corner. And he claimed that they decreased more rapidly than the assessments did. The assessment were placed on the lots at the same ratio all along the whole block for twelve lots, which, as a matter of fact, the lots at one end of the block were worth two or three times what the lots were at the other end of the block; and the cheapest lots were excessively assessed, and the inside lots were under-assessed. Witness says it is hard to place assessments on inside property, and to drop off assessing one lot at five hundred dollars, and the one alongside of it for one hundred. It looks pretty bad, and is seldom done, although in his judgment, it should be done.

The population of Sequim March 1st, 1912, was 300; it is now 500. March 1st, 1914, it was 450. Thinks the Board made changes in the valuations while at Sequim.

Witness's firm has been the agent of the McClay estate for about eighteen months. The highest price at which the property of the McClay estate has been sold is fifty dollars per acre. It has been contracted for, not sold, two pieces. The contracts call for one-fifth cash, and the balance in five or ten years, to suit the purchaser. Witness says that it is not true that any of the McClay estate has been sold for fifty dollars an acre. None of it was sold until 1915. Prior to eighteen months ago the McClays themselves sold one piece of forty acres. The average value of the McClay estate property is fifteen dollars an acre. It is assessed approximately at seven dollars an acre. It

is wild land. It is better than most of the other wild land in Clallam County. There are eight thousand acres in the McClay estate, of which sixteen hundred acres are susceptible to irrigation. That is the most valuable portion of it, and holds up the balance of it. A great portion of the estate lands is not worth five dollars an acre. All the land in this estate lying west of McDonald Creek, and thence across Siebert Creek is worth about six dollars an acre.

Witness is handed plaintiffs' exhibit "R," which is a list of valuations of property furnished by W. K. Ware, a real estate expert for the plaintiff, and witness is asked to refer to the first and second pages, and state whether he has sold any of the land in Section 18, on or about March 1st, 1912, or March 1st, 1914. Witness says that he sold some in the south-east quarter of Section 7, near this Section 18, twenty acres, five acres of it improved. He says, he bought it for twenty-five dollars an acre for another man. Witness admits that Section 18 is practically all cleared, while Section 7, there is very little cleared land on it. The cleared land which he bought did not compare with the cleared land in Section 18. Witness says that there was no difference in the value of the land appraised by Mr. Ware in 1914, from its value in 1912.

Witness refers to the property in section 18 about which the witness Ware had testified to a valuation of \$100.00 per acre in 1912 and \$200.00 per acre in 1914. Witness says that just the reverse is the fact. That it is not worth any more in 1914 than it was in 1912. That it don't sell for any more nor produce any more. Witness states that his firm has sold practically all of the real estate in the town of Sequim during the period of 1912 to 1914 that has been moving. The list furnished by this witness is introduced as Defendant's exhibit "32."

Defendant's introduced exhibit "33" as the testimony of the witness' valuation of the properties as therein shown. Witness swears that these reflect his judgment of such values.

CROSS EXAMINATION BY PLAINTIFF.

“Q. Have you the original of that, Mr. Keeler, the original from which the typewritten copy was made?”

A. No, sir, I haven't got it all. I have got a part of it. I haven't the amount of taxes, or anything of that kind. I have my own valuations.

Q. You have a list of your own valuations on all the property that is included in there?

A. No, sir; not all of them; part of them; part of them.

Q. Where is your estimate of the balance that is not included in this exhibit “33”?

A. I did not make any.

Q. Whose statement then is this exhibit “33”?

A. It is my statement.

Q. And yet you say you did not make any copy?

A. No copy of this. I did not retain any copy of it.

Q. Did you dictate it yourself?

A. Yes, sir; I did.

Q. To a stenographer?

A. Yes, sir.

Q. Where?

A. Up stairs.

Q. Here in this town?

A. Yes.

Q. When, three or four days ago?

A. I never was asked to make any estimate or anything until then.

Q. What day did you do it, do you recollect?

A. What day is this, Saturday?

Q. This is Saturday, yes sir.

A. I think I did that Monday.

REDIRECT EXAMINATION.

BY MR. FROST:

Q. Mr. Keeler, in the preparation of this list which contains your statement of the market value of the property, placed upon the descriptions therein contained, did you have with you at the time of dictating it your books and records showing your tran-

sactions and dealings with various properties in and about Sequim?

A. Yes, sir."

Witness further says that in making up this tabulation of valuations, he used his own knowledge of actual sales that had been made, aided by the records of those sales, which he has with him. He has all those books still with him.

"Mr. Peters: I take it that Exhibit "33" is admitted under the stipulation of counsel the same as with respect to the testimony and tabulation of Mr. Ware, one of our own witnesses, with the understanding that it contains a statement by the witness of his judgment of the market values for the years therein stated of the properties therein referred to, and I also take it the tax assessment is in there.

MR. RIDDELL: The assessment is correct.

MR. PETERS: The privilege being reserved to ourselves as to counsel on the other side respecting all the exhibits to check the assessments up at any time before submission to the Court.

I don't know but what it already appears in the record, but we might as well now make this further general stipulation that the admissibility of other tabulated statements of known witnesses with respect to the real estate goes in in the same manner."

Witness says that the actual prices of sales made enter into his estimate of valuations placed on this list, exhibit "33." They entered into it to a large extent, because there had been no great boom in Sequim, and property had not gone up to any great extent. Witness has lived continuously in Clallam County for twelve years, has been there off and on for thirty years. Besides being in the real estate business, he has run a saloon, a saw-mill, a telephone company, a livery stable, general merchandise business, hotel, bakery, store, pool-room, soft drink place, electric light plant and water system; is also a Notary Public, undertaker, and has conducted funerals, and preached services. Witness says, he has never had any knowledge of, or heard any rumors of the con-

spiracies charged in the plaintiffs' bill, and no such understanding or agreement existed.

Witness is handed defendants exhibit "34", which he says is a blue print of the Central part of the town-site of the town of Sequim, which is identical with the blue print used by him for the sale of lots. No sales were ever made at figures higher than those placed on the plot, but sales were made for less for cash. These sales were for ten dollars down, and ten dollars a month; most of them made in 1913. The only lots shown on that plat which were not sold are lots 1, 2 and 3 in block 4. This property was all sold in 1913 and 1914, and in 1914 the witness bought all the lots that were left at a stated price. In politics the witness is a Democrat. This is offered in evidence by defendants as exhibit "34".

On cross examination witness testified as follows:

"Q. Mr. Keeler, would there be any difference in your statement with reference to a matter of fact when made under oath and not made under oath?"

A. Would there be any difference as a matter of fact?

Q. Would there be any difference in your statement with reference to a matter of fact were you making the same statement with reference to it not under oath?

A. I might be a little more particular in making a statement under oath than I would if I was trying to sell a piece of land to somebody.

Q. That is what I want to get at. I don't want to draw too fine a distinction; but if you made a statement in the ordinary course of your business with reference to a fact would it make any difference whether you swore to it, or whether you simply made it as an unsworn statement?

A. It would depend entirely on whether I considered it the other man's business what I told him. If he was asking me something that I thought was my private business, or I did not consider he had any right to ask, I would probably tell him most anything, or if I thought he was insincere in his question.

Q. Under those circumstances would you tell him a lie?

A. Yes, sir. I might tell him something else too.

Q. In a business deal, in the ordinary course of your business, and when your statement relates to a matter of fact, would you feel yourself free there to make a misstatement because you were not under oath?

A. No, sir.

Q. In your business transactions would you feel that your statements not under oath could be taken with the same degree of credibility that they would when under oath?

A. If I told a man that such and such a thing was the fact, it would be a fact, or I would consider that it was at the time I was telling him."

Witness says that his hotel property is described as lots 1 and 2, block 1, First Plat of Sequim. This is shown on his tabulated list. It was known as the hotel SinClair. Witness admits that it was contracted to be sold to Mr. Roberts for nine thousand dollars.

This is objected to by counsel for the defense, on the ground that it is no measure of value.

Witness says the date of the contract of sale was the first part of May, 1914. Those are the same lots that he had listed on his exhibit "33" at four hundred and fifty dollars, this being at the top of page 7, of exhibit "33". They are listed at two hundred and fifty for one lot and two hundred dollars for the other lot.

Witness' attention is called to the Cook property in Section 13, township 30 N. Range 3 W. It is listed on page 2 of the witnesses list. There were seventeen acres in the piece. It is the west half of the south-east quarter of section 18, township 30 range 3 west. Witness has it appraised in his list at twenty-five hundred dollars. Witness is aware that this land was sold to a man by the name of Ridgeway, but does not know the consideration, and did not look it up for the purpose of making this list. The witness wrote Mr. Cook for value on the place and Mr. Cook always

had it so high that witness did not have nerve enough to try to sell it to anybody so that he never took a list of it.

Just a few of the valuations on this list are based upon actual sales that witness knew of, possibly ten per cent. Witness thinks about ten per cent of this property has changed hands in the last four years. Witness has been acquainted with about all such sales. Right opposite the Cook place that man Ridgeway's son bought some property from Mr. Baker at about the rate that witness has listed the Cook place at.

Witness is shown by plaintiffs a photograph of Sequim, marked plaintiffs' Exhibit "U" and the following testimony develops:

Q. Do you know the writing on that picture?

A. Yes, sir.

Q. Is that your writing?

A. Portion of it is.

Q. Is your signature there at the end of it?

A. Yes.

Q. Then does all that that precedes your signature constitute your writing?

A. No sir.

Q. What part of it doesn't?

A. Do you want me to read it?

Q. Yes, go ahead and read it.

A. "Values of cleared (emphasis on cleared) rocks picked and level off, also irrigated, carrying perpetual water-rights, two hundred dollars an acre. Assessed at sixty to seventy-five dollars per acre. All lands should have water rights. Sales are often made at two hundred and seventy-five to four hundred for improved lands. J. L. Keeler, Sequim, Washington."

Q. What is the reverse side there?

A. That is a picture in the Sequim prairie district.

Q. What is that red mark on there?

A. That is some figure you placed on there.

A. Yes, probably given in reference to that particular piece of land right there which we were trying to sell.

Q. Do you recognize the piece?

A. Roy Stones.

Q. Roy Stones farm, is it?

A. Yes, sir.

Q. What is the size of it?

A. He has sixty acres altogether. He has two pieces.

Q. Does the statement on the back of the photograph represent your opinion of the value of that at the time you made it?

A. With the improvements everything?

Q. As qualified in your writing there?

A. Yes, sir, two hundred dollars per acre.

MR. EARLE: We offer this in evidence as plaintiffs exhibit "U".

(The photograph referred to received in evidence marked plaintiffs exhibit "U".)

MR. PETERS: Have the witness identify what is his handwriting. What is that which is written by him on there and what isn't?

A. I did not put that "first" on there.

Q. Just read what you put on there and what you didn't place, so the stenographer would get it.

MR. RIDDELL: I think he did read the writing which was his own.

A. That what I read was my own writing. The preceding is not my writing.

Q. Read so the record will get it what precedes it which is not your handwriting?

A. "Sequim prairie, town of Sequim in center of background. No. 5 to left of center of background. No. 17 to right of picture.

Q. That is not your handwriting?

A. No sir.

Q. All the rest that is on the picture in that exhibit is your handwriting?

A. Yes, sir. This No. 5 and No. 17 refers to something else.

Q. State when you made that writing, what date.

A. I haven't the least idea.

Q. What is this (Showing another photograph)

A. This is the picture of the Dungeness bottoms.

Q. Whose writing on the back?

A. My own.

Q. Is it your entirely?

A. It says "B" Dungeness bottom land. No. 6 to the left."

Q. Read it in the record that part which constitutes your own statement.

A. "Valuation of all cleared land on this photo is two hundred dollars per acre. This has been the value for five years past. Not much being sold as owners desire a good revenue for same. Dungeness bottoms".

MR. EARLE: I offer this in evidence as plaintiff's exhibit "V".

(Photograph referred to received in evidence as plaintiffs' exhibit "V")

Q. MR. Keeler, do these statements on the back of these photographs represent your opinion of the values on the property shown in the picture?

A. No, sir.

Q. They do not?

A. No, sir.

Q. Then at the time you made this statement on the back of this photograph did you make a misstatement?

A. Not necessarily. I made that statement that the values were two hundred dollars an acre. I did not say that it paid interest on that or anything of that kind. It evidently was made with reference to some sale that I was trying to make.

Q. You say that not much is being moved, as the owners derive a good revenue from the same. How much of this statement is true and how much is false?

A. They do derive a good revenue.

Q. That much is true?

A. Yes, sir, but in my opinion there is not an acre out there worth two hundred dollars. I said the valuations are two hundred dollars, but I did not say they were worth it. I did not say that it is worth two

hundred dollars; I said that the valuations were two hundred dollars per acre.

Q. You said this has been the value for five years past?

A. Yes sir.

Q. Is that true or false?

A. What it has been held at.

Q. Has it been sold at that?

A. No, sir.

Q. Where it has been selling, did they get prices of that figure?

A. I don't know of any that has been sold for anything like that price.

Q. When you say that "not much is being sold as the owners derive a good revenue from it", do you mean that they are deriving such a revenue from it that they are justified in making that sort of a price?

A. No, sir, I do not. I do not believe that it pays four per cent interest on it, let alone, they are not drawing any wages.

Q. This property is being held at two hundred dollars?

A. I do not know what it is being held at. That refers to one piece, the Ward estate.

Q. You say that the valuations of all cleared land is worth two hundred dollars. What did you mean by that?

A. I was trying to sell a piece of land out there, or my partner was. He wrote that first part; and I was endeavoring to assist in the sale of that land.

Q. When you say the value of cleared land is two hundred dollars an acre, what do you mean? Do you mean it is worth that?

A. No, sir.

Q. What does "valuation" mean?

A. There is a difference in what I consider it worth and what other people consider it worth, and what it is being held at. When a man comes in and lists a piece of land with us for sale and he wants so much, we endeavor to sell it for that price.

Q. You mean then, do you, from that statement

that the land shown in this photograph that it is held at two hundred dollars an acre, that it what the farmers want for it?

A. No, sir; I can buy lots of it for less than that.

Q. What did you mean when you said the value was two hundred dollars an acre?

A. I wanted that fellow to pay two hundred dollars. I would not pay two hundred for it.

Q. You are representing to some parties purchasing that that it was worth two hundred dollars and you did not mean that statement?

A. I did not tell him that. It did not put me on oath as saying two hundred dollars an acre, and did not put me on my honor as saying it is worth two hundred dollars an acre.

A. Did you mean to mis-lead this man by making this statement to him?

A. I wanted him to buy that place. I was not asking him two hundred dollars. If you have the letter that went with it, I did not ask him one hundred dollars an acre for it.

Q. You say this has been the value for five years past; what did you mean by that?

A. It was representing to him that he was getting a good buy at less than one hundred dollars an acre for this land.

Q. (Mr. Riddell) Do I understand that there was a letter that went with that?

A. I think probably there was. I do not know under what conditions that was got; but the place that we have been endeavoring to sell in Dungeness bottom, there is only one place we have been trying to sell and that refers to the time when we wanted to make that man think he was getting a good buy.

Q. (Mr. Earle) What did you mean by saying, "Not much is being sold as the owners derive a good revenue from it"? Did you mean that the farmers are holding this property at two hundred dollars an acre and they are not selling very much because they prefer to keep it and get the revenue out of it?

A. I think if they were offered two hundred dollars an acre they would sell it.

Q. You think they would sell it all at two hundred dollars an acre?

A. Yes, sir; be glad to.

Q. This conversation and these valuations refer to this exhibit "V", do they not?

A. Yes.

Q. The property shown being in the Dungeness bottoms?

A. Yes, sir.

Q. If property was listed with you or with your firm, Mr. Keeler, at a certain price and you represented to another man that that price was high, or low, would such a statement be true or false in the ordinary conduct of your business?

A. It would depend on who I was dealing with.

Q. You would be inclined to tell one man the truth and another one something else, is that what you mean by your testimony?

A. Not exactly that, no.

Q. Explain it?

A. Well, if I knew the man, knew who he was, and he was a resident of the section he would get a good deal better bargain out of me than a fellow that I did not know or a man that I was writing to. We do business from a real estate office, I suppose, something like the rest of them do.

Q. (Mr. Peters) Let's hear how they do business; finish your answer.

A. I did finish it.

Q. How is it you were doing business and how do the rest of the real estate men do business?

A. We don't depreciate on the value of property. If a man lists it at a certain price, we endeavor to get that price for it.

Q. That is your explanation, is it?

A. Yes, sir.

Q. (Mr. Earle) And if a customer comes in and you represent to that customer that this price at which the property is listed is a little too high, or is

a fair price, or a little too low, would that statement of yours relative to the price be true or false, or would it depend on whether the man was a friend of yours and lived in the same community with you? As I understand it depends on whether you know him well enough to justify you in telling him the truth?

A. I might tell him the truth and I might lie to him. I try to sell him that piece of property. He can see it for himself, and we show it to him."

Witness has not taken any listings of property in his real estate office for three months because there is not any sale for the land. There is very little land moving. They are confining all their efforts to the McClay estate and when people come in and want to make listings for sale the witness simply makes a note of it and tells the people that they will not ask them to sign a listing and if they see anyone that wants that kind of a place they will send him to the owners and they can make their own deal."

Witness says that the Frank Lotzgesell place was worth March 1st, 1914, about seventeen thousand dollars; that it did not change in value between that date, March 1st, 1914, and July 31st, 1914, and was substantially the same value on March 1st, 1912. Whereupon the following testimony develops,

"Q. And have you stated on the 31st of July, 1914, that that property was worth twenty-five thousand dollars, would that statement be true or false?

A. If I stated that it was that it was for the purpose of making a sale in which I was very much interested.

Q. You have not answered my question.

A. It would be false, in my estimation it was not worth that much.

Q. And it was false on the date you made it, was it?

A. If I said it was worth twenty-five thousand dollars, I said it was worth more than it was.

Q. Do you recognize that letter? (Showing)

A. Yes, sir.

Q. You wrote that, did you?

A. I wrote that letter, yes sir.

Q. You wrote that letter, did you?

A. Yes, sir.

Q. And stated in it—

MR. RIDDELL: The letter speaks for itself.

Q. Read the letter into the record.

MR. RIDDELL: I object to him reading the letter in evidence. It is the best evidence. Introduce it.

MR. PETERS: We offer the letter as plaintiffs' exhibit "Z", and now proceed to read it into the record.

(Reading letter)

"Keeler & Mortland, Investments.

Sequim, Washington.

July 31, 1914.

K. O. Erickson,

Port Angeles, Washington.

Dear Sir:

We have just returned from another call on Lotzgesell. George absolutely will not state a price on his place. However, I succeeded in getting a price on the old place owned by Frank. He will take thirty thousand for it; but will not give a written option. I did not press him as I consider it about five thousand dollars high. He says he will accept that figure any time within sixty days. He has one hundred and thirty-nine acres all cleared, and you know what the improvements are.

Regreting not to have done better and awaiting your further pleasure,

Yours,

J. L. KEELER,

Sequim."

Q. That was your letter, was it?

A. Yes, sir.

MR. EARLE: We offer this letter in evidence.

(Letter received in evidence and marked plaintiffs exhibit "Z".)

Mr. Keeler, do you recognize that letter? (Showing another letter.)

A. No, sir I do not recognize the letter. I may

have written that. That is a typewritten letter not signed by any one.

Q. Does it say "dictated"?

A. It says "Dictated, J. L. K." But I did not write that.

Q. Did you dictate it?

A. No sir; all the letters Erickson got from me I wrote myself. That is all that I authorized.

Q. (Mr. Peters) Mr. Keeler, this is on your letter head and paper, that you use, the letter of August 12, 1914, isn't it?

A. It is on my letter head, yes sir.

Q. And that is the type of the typewriter that you use, isn't it?

A. I do not use the typewriter.

Q. You have one in your office, don't you?

A. Yes, sir.

Q. You know that is what I mean, don't you?

A. Yes, sir; this may have come from my office, but not from me.

Q. That is what I want to get at. Wasn't that letter written in your office?

A. I do not know anything about it.

Q. What are the initials J. L. K. down below there?

A. It says I dictated it, but I did not.

Q. You did not dictate it?

A. No sir.

Q. When you dictate letters in your office what is the custom of your stenographer?

A. I always sign all the letters that I dictate.

Q. What is the custom of your stenographer in putting any memoranda on the letter to identify who took the dictation?

A. I have no stenographer.

Q. Who does the work?

A. On my typewriter?

Q. Yes, sir.

A. Mr. Mortland.

Q. Does Mr. Mortland put down "Dictated, J. K. K"?

A. I do not think he does. I do not know that he does. He possibly may do it at times. If he does, he generally signs himself."

Witness further says that if this letter was written in his office he has a carbon copy of it. He keeps no letter press copies. The carbon copies are filed in a regular order, filed in chronological order. Witness further says that with reference to this Lotzgesell sale, several other people worked out of his office, and they all tried to sell the property, that witness had listed, and used his office, and they might have dictated this letter, and signed the firm name, and sent these letters out. They might have sent them out over his name. Witness has known of other instances of this kind. Witness did not keep a stenographer in his office in 1914, in connection with his real estate business. Witness would say that the statement in the letter to the effect that the Lotzgesell property was worth two hundred and fifty dollars an acre was too high a valuation; that it was probably worth one hundred and twenty-five dollars an acre. Witness does not know anything about the value of the barn or the house, or other improvements upon the property. On the Frank Lotzgesell place there was to be no commission from Lotzgesell if the sale was made. K. O. Erickson had offered to pay a commission in addition to the purchase price.

Witness is shown by plaintiffs another letter with his signature, which he admits, wherein the O'Leary five acre tract is said to be worth two thousand dollars. Witness says that is a little optimistic. It is right inside the town. Witness would say that at the time the letter was written, in July, 1914, he could have platted the five acres, and sold it in town lots, probably for two thousand dollars. As acreage, it is worth not over sixty or seventy dollars an acre.

"Q. (Mr. Earle) When you say, Mr. Keeler, that five acres is worth conservatively two thousand dollars, what do you mean by that, as to the actual value, if the conservative value is two thousand dollars, what is the actual value?"

A. I mean if he was going to plat it into town lots and was asking me about it, I could get him two thousand dollars out of it if he would plat it into town lots; but in acreage I could not get him over four or five hundred dollars for it.

Q. For the five acres?

A. Yes, sir; it is uncleared and uncultivated. You might as well ask me all about that letter, when you are at it.

Q. That is enough.

MR. EARLE: We offer this letter in evidence as plaintiffs' exhibit "AA".

(Plaintiffs' exhibit "AA" received in evidence.)

Q. Do you recognize that letter? (Showing witness another letter.)

MR. RIDDELL: Do those refer to properties that he valued in his statement?

MR. EARLE: Yes, sir. It is in the townsite.

MR. RIDDELL: Have you valued those properties in your list that you furnished there?

A. Yes, sir. I valued those two eighties of Fitzgerald's.

Q. Did you value the other?

A. The five acres?

Q. Yes, sir.

A. No, sir.

MR. RIDDELL: We object to that.

WITNESS: I recognize the signature.

Q. That was written by Mr. Mortland?

A. I presume so. The signature is Mr. Mortland's.

Q. Then it is his letter, isn't it?

A. I presume so.

Q. Would you say that the statement appearing here that the farm of Lotzgesell is one of the finest farms in Clallam County, and any man who secures it would be most fortunate, is it true or false?

A. It would depend on what he paid for it whether he would be fortunate or not.

Q. You people had this farm listed at a certain price and any correspondence with reference to it must

have passed upon that price; taking your price of thirty thousand dollars, for instance?

A. I think like Mr. Lotzgesell, that he was a damn fool if he gave it, but he would take it if he gave it.

Q. Taking your valuation of twenty-five thousand dollars?

A. I never put a valuation of twenty-five thousand dollars on it.

Q. You stated that the offer of thirty thousand was about five thousand high?

A. I did not say how much more high, either. I did not quit at five thousand. I admitted that I thought it was five thousand high. I did not attempt to say how much more too high, except five thousand.

Q. Did you intend by this statement to mislead your possible customer by saying it was worth twenty-five thousand dollars?

A. I would not have had any scruples about misleading K. O. Erickson.

Q. (Mr. Peters) Mr. Erickson is a citizen also of Port Angeles, is he?

A. A citizen of Mori, Clallam County.

Q. A neighbor of yours?

A. No, sir. Mr. Erickson seen this land, went over it with me, knew all about it, and he is a farmer himself, and he wanted me to put as high a price as possible on this farm so that he could sell it to his people. He was the one that was misleading, and wanted me to aid him in it.

Q. And in order to accomodate Mr. Erickson you did put as high a valuation as possible on it?

A. I did not put any valuation on it. I said that thirty thousand dollars was too high.

MR. EARLE: We offer this in evidence as plaintiffs' exhibit "BB".

MR. EWING: I object to this letter signed by Thomas G. Mortland for the reason it is incompetent, immaterial and irrelevant and not proper cross examination, and hearsay testimony, and for the further

reason that it is not proper impeaching evidence, and Mr. Mortland has not testified in this case.

(Plaintiffs' exhibit "BB" received in evidence subject to the objection.)

Q. (Mr. Peters) Mr. Keeler, referring now to this exhibit "33", which is a list of your valuations of property, would you let me see the original from which you made this?

A. You want my pencil one?

Q. Yes, sir.

A. I have got only a part of it.

Q. Let me see the part that you have.

A. It is the platted portions of Sequim. I just happened to keep them. You will find a few alterations, three or four, or something like that, I believe, in it.

Q. You did not make out any list for the acreage property?

A. There is a list there, but I haven't got it. I just went over the different descriptions of acreage in my mind, and figured on the different tabs, and threw them away as I figured it.

Q. Now, the first manner in which you made up exhibit "33" was to take the various tracts of land and put them down in one column and next to them you put the assessed value in for 1912 in a column, and then your valuation for 1912, and then the assessed valuation for 1914, and your valuation for 1914, is that not a fact?

A. No, sir.

Q. Just how did you make it?

A. I put down my valuations for 1912 and 1914 and the stenographer put down the taxes for it, I believe.

Q. Were the assessments down first?

A. No, sir.

Q. Did you see the assessments at the time you made your valuations?

A. No, sir.

Q. You don't know what they were?

A. No, sir; I made my valuations and they went

over it with the tax books and put down the taxes.

Q. After they had gone over it with the tax book you looked over the list?

A. Yes.

Q. And compared your assessment with the tax valuation?

A. To a certain extent, yes, sir.

Q. That is true, isn't it; you went from the top down to the last?

A. No, sir; I was anxious to see for my own satisfaction how they compared with some assessments, and you will find, if you run through it, that it don't look as if I had paid attention to the taxes, to the assessed valuations, because you will find in some places they are vastly different.

Q. What was it that struck you about that?

A. I put down what I figured was a fair valuation.

Q. What was it you attracted my attention to as showing the differences between the assessed value and your valuation; what is striking about it?

A. I do not think the assessed valuation has much bearing on my valuations there.

Q. That is in many instances your valuations are more than twice the assessed valuations?

A. Yes, sir.

Q. And that is what you are endeavoring to show by the list, wasn't it?

A. I was not endeavoring to show anything only the correct values of realty there under oath.

Q. That is what you were trying to show, to show the correct values of realty?

A. Yes, sir.

Q. What, (Counsel withdrawing exhibits from witness' inspection) would you say was the value in 1912, section 17, tp. 30, range 3, of the northeast quarter of the southwest quarter?

A. I would have to have a map.

Q. I don't want you to.

A. A map; I said I didn't want the list.

Q. Only this map used over here?

A. I have that little one here.

MR. RIDDELL: Would you tell the witness the name of the owner?

MR. PETERS: No.

MR. EWING: Then we object to the cross examination as being manifestly unfair.

A. I want to fix that particular property in mind. There may be three or four different owners in that.

Q. (Mr. Peters) But with the map you can fix it, can you?

A. What did you say it is?

Q. The northeast quarter of the southwest quarter of section 17, township 30, range 3.

A. It is worth about one hundred and twenty-five dollars an acre.

Q. That would be six thousand dollars for the forty, wouldn't it,—five thousand dollars?

A. I don't know. Figure it up. I haven't got a pad; I am not very good figuring in my head.

Q. What would be the value of that in 1914?

A. About the same.

Q. It hasn't changed any?

A. I am not positive whether that is all clear, or not. It is worth about that for that portion cleared in that section; I think there is about ten acres on the north side of that forty that is not cleared; that is, on the hillside.

Q. If you put in your list here, exhibit 33, as forty-five hundred dollars for each of those three years, which would you say now was your best judgment, what you had in the list, or what you put in now?

A. Forty-five hundred dollars.

Q. Why?

A. Because when I made out that list I went over it, over each man's holdings in my mind. I am not positive whether I am placing this forty, whether it is the front forty or the back forty. I wanted to be positive about it. I think, if it is the back forty the ten acres of undeveloped land on it, forty-five hundred dollars would be the proper valuation, and if it is on that paper, that is not right."

MR. EWING: We object to this line of cross examination for the reason that it is manifestly unfair and indicates simply a memory test of the witness, and not a test as to his credibility. If the witness' attention is called to the ownership of these various tracts about which he has interrogated he will give an answer that corresponds to the valuation that he has already placed in his statement; that the whole thing is a small piece of pettifogging.

MR. PETERS: Do you expect to do the only pettifogging in this case?

MR. RIDDELL: No, you had your man Ware who was looking at the valuation and reading it off the map.

MR. PETERS: That was your business to test his recollection. I will leave it to the Court to judge whether it is fair to ask these questions or not, and I will go on with my method of examination. When it comes down to pettifogging I don't try to compete with anybody else.

“Q. Refer to the southeast quarter of the southwest quarter of the same section, township and range?

A. That is worth six thousand dollars.

Q. The southeast quarter of the southwest quarter?

A. What do you mean, of 17?

Q. Yes, sir.

A. The southeast quarter of the southeast quarter of section 17, township 30, range 3, is worth about twelve thousand dollars.

Q. You have it in your list here as thirty-five hundred for each year?

A. You described one hundred and sixty acres, did you not?

Q. I told you, the southeast quarter of the southeast quarter.

A. I thought you said—named the whole one hundred and sixty acres there.

Q. I said the southeast quarter of the southwest quarter.

A. One forty.

Q. Yes, sir; what it is worth?

A. About thirty-two hundred dollars.

Q. What did you think I meant when you said it was worth six thousand dollars?

A. I didn't say six thousand; I said twelve. I meant the entire 160 acres which is owned by one man, MR. E. F. Gerring.

Q. (Mr. Ewing) If it should appear that that is not the Gerring property what would you say about it?

A. I would say that is not right.

Q. Suppose that it was shown that is the Brown property, what would you say about it?

MR. PETERS: Take the northeast quarter of the northeast quarter of section 18, township 30, range 3, what is its value?

A. That is worth from fifty-two to fifty-five hundred dollars.

Q. What would you say in 1914?

A. About the same thing. I am testifying as to 1914, and 1912.

Q. What would you say as to the northwest quarter of the northwest quarter of section 18, township 30, range 3?

A. Well, that is not worth very much. I don't just place that in my mind.

Q. What would you say it was worth?

A. I could not say definitely what it is worth.

Q. You gave a listing to it on your exhibit "33"?

A. I know it wasn't very much.

Q. Would you be surprised to find that you had listed it here at thirty-five hundred dollars?

A. For the forty acres?

Q. The northwest quarter of the northwest quarter; that is forty acres, isn't it?

A. Yes, sir; I would be surprised if I did.

Q. (Mr. Ewing) I want to ask you if you are able to recognize the various properties from the mere legal description of them as read to you by counsel?

A. No, sir, I am not; and furthermore, whenever he asked the description in Port Angeles you said,

“Known as the Morse Building”, or known as the Elks Holdings, and when you come to me you don’t give me a chance to say. You say “known as a place in which you referred to Mr. Erickson, or the place in which so and so lives”, and you allowed them to place them, don’t you remember?

Q. (Mr. Peters) You have before you the map giving the sections and quarters, a map with which you are familiar, aren’t you, in your lap?

A. Yes, sir, I am familiar with the map, but I can’t place all the different values by it, though.

Q. I am sorry, I will go on with my examination.

Q. (Mr. Frost) If you were given the names of the owners of these respective farms and places, would it refresh your memory?

A. Yes, sir.

Q. Do you identify the places on Sequim prairie by legal descriptions, or by the names of the residents and owners of the farms?

A. By the name of the residents and owners. We never describe it by metes and bounds, or any other way.

Q. (Mr. Peters) Well, does the land at Sequim Prairie run somewhat uniform as to its valuation?

A. No, sir, very much the opposite. Two ten acres tracts laying alongside of each other, one will be worth double the amount of the other.

Q. I am reading you from your exhibit “33” just what appears on here, the description that is given here, and I ask you to refer on your map to the thirty acres in the south half of the southeast quarter of section 18, township 30, Range 3.

MR. RIDDELL: Which thirty acres?

MR. EWING: Whose thirty acres is it?

MR. PETERS: I do not know. That is the way he has understaken to testify by this statement.

MR. FROST: The witness also testified that he made it from the records and books.

A. I made it from the owners. I took the various owners and I know what they owned and I made my estimate.

Q. (Mr. Peters) I refer to you this piece of property designated on page 2 of exhibit "33", which is your list of valuations which you describe as thirty acres in the south half of the southeast quarter of section 18, tp. 30, range 3; what did you give as the valuation for that?

A. About thirty-seven hundred dollars, or thirty-seven hundred and fifty dollars.

Q. Is that a fair valuation? Is there any change in the valuation of that?

A. In 1912 and 1914?

Q. Yes, sir.

A. I can't place any change on it unless I knew just exactly which property it was.

Q. Now, you say you identified this property in making out the list by reference to the owners of the property?

A. Yes, sir.

Q. Where did you get a list of the owners?

A. From the records.

Q. From the tax records?

A. Yes, sir.

Q. Then you did see the tax records every time you looked up a piece of property and you could see the owner?

A. Yes, sir.

Q. When you went to make out the list of valuations say of the northeast quarter of the northeast quarter of the northwest quarter of 19, township 30, range 3, you looked up on the tax records of that property and saw whose name it was in, and saw the tax record, and then you began to estimate your values, is that the way you did it?

A. Only in a few instances.

Q. Then where did you get the names of the owners?

A. I have a list of all the names of the owners of east end property.

Q. Where is it?

A. In my office.

Q. Whereabouts?

A. At Sequim.

Q. Didn't you tell me that you made up this list and dictated it in the room upstairs in this Federal Court Building?

A. No, I did not say I made it all out upstairs. I said that is where I made the copies upstairs. I made that original list that you have there out in the hotel".

Witness says that he made this original list out in the Hotel Northern, here in Seattle; admits that he did not have a list of the owners at the Hotel Northern. He did not need it for this list. He did not bring a list of owners up to court with him. He dictated the greater part of this exhibit "33" to one of the defendants' stenographers in the room here in the Federal Court Building.

Witness' attention is then called to the northwest quarter of the northwest quarter of section 19, township 30, range 3, W., and he is referred to his map to identify it. He states the value of this is four thousand dollars. There has been no change in its value. It is only partly cleared. It is worth one hundred dollars an acre, but it is practically in town; less than a half a mile from the incorporated portion of the town.

Witness's attention is directed to the Barrow Donation Claim, shown upon exhibit "33", and described as in section 2, township 30, and section 35, township 31, all in range 4 West, about one hundred and fifty acres. It is worth, he says, one hundred and twenty-five dollars an acre, that is, the cleared portion. The unimproved is not worth five dollars an acre. About eight or nine acres are unimproved. This is the George Lotzgesell property.

Referring to block 1, lots 1 to 6, of Cooks addition, witness says it was worth five hundred and fifty dollars in 1914. Witness says he is not including improvements in this list of his, exhibit "33". Portions of the property in this list, exhibit "33", are improved; and the witness in placing these valuations upon it, has not taken the improvements into consideration. Practically every year since witness has been in Sequim

when the Board of Equalization has come down to Sequim they have come to the witness for information. The board comes down there and looks over the country and drives to the different farms. There was no particular meeting about it. He saw the members of the board in the street, in his office and he went out with them. The board talked and considered different places as they went along. The most the witness did was to locate them and show them where the different property was. They generally come to him for information. On going into the record to look up assessments he found out that in his judgment the highest valuation was placed on the cheapest lots. That some lots are not worth anything and he supposes they have to get them on the roll at something. He has noticed that on town lots in Sequim that the lots which were least valuable and farthest away from the corners would be assessed the highest prices proportionate to their values. That the witness has sold practically every lot in the town, handled them, owned them more or less. He might say he platted the town, that Keelers Plat was the first one ever recorded, and "I am pretty well qualified or I imagine that I am, to place the values on those lots, figuring from what we have sold them at, what we bought them at, interest on the money and taxes that have been paid, etc. That is the way I figure the prices of the lots."

"Q. What was your rule or manner in making that difference?

A. I didn't have any regular rule.

Q. Didn't you call that to the attention of the County Commissioners, or the Board of Equalization?

A. No, sir, I did not.

Q. I thought you said that that was one of the things that you pointed out to them?

A. I do not think I said that I pointed that out to them.

Q. Did you not call that to their attention?

A. I don't think that I did at that time.

Q. What other matters, or what matters did you call to their attention with reference to the assessments?

A. Lots that abutted on streets, that is, those cleared and graded, and lots that didn't. Lots that have an alley way and a mode of egress in front and behind, and lots that hadn't; some lots didn't have any alley back of them. Consequently in my opinion they are worth less. Other lots have a nice wide alley back there that is all cleared up and they are worth more.

Q. And these gentlemen called on you and they got you to go around with them and look at the farms?

A. They didn't get me to; I went. I don't know whether I was welcome or not.

Q. And you talked with them?

A. Not a great deal. I showed them where they were, that is all.

Q. You showed them where they were, and they discussed the taxes with you?

A. No, sir.

Q. They discussed the assessments with you?

A. Very little. They didn't discuss the assessments in my presence much. I understood they were going back to Angeles and discuss the matter there in the Chamber.

Q. If they didn't discuss the things very much how was it that you heard all this that was going on there that you testified to on direct examination?

A. What did I testify to hearing?

Q. Well, there are a good many things that you said they stated at the time.

A. What were they?

Q. I do not know that I can recall them just now.

A. I want one or two of them.

Q. I am not under examination, Mr. Witness.

MR. EWING: And you don't like it when you are, do you?

Q. (Mr. Peters) I didn't mean that in the slightest. One of the things you said was that the Board went around and made a personal investigation of the values and you thought the taxes were too high, and pointed out the small size of the town, the value of the corner lots that you said would be assessed the same, and the excessive assessment was put on the

cheapest lots. You stated at the time or in support of that at that time, that you told these things to the Board of Equalizaion.

A. You have misquoted me there. I did not say that the excessive assessment was placed on the cheapest lot.

Q. You did not?

A. No. You misunderstood that, the same as you did the other. I mean in proportion.

Q. You meant in proportion?

A. That is lots I would consider worth one hundred dollars might be assessed at fifty dollars, and another lot that I only considered worth sixty dollars might be assessed at fifty dollars, and they might both be in the same block."

The Board made no changes in the assessment from 1912 after visiting Sequim. They made a few changes in 1914. In 1914, they practically doubled the assessment on Sequim lots. The people were willing to have them doubled. There was no complaint. They thought they were too low before, and were willing to have them doubled.

Witness says that his hotel property that he contracted to sell for nine thousand dollars has gone into the possession of the purchaser, but the purchaser was talking with him to-day, and would like to give the property back.

Witness' attention is then called by plaintiffs counsel to defendants exhibit "34", the central plot of the town of Sequim, blocks 1, 2, 3, and 4; he says that those lots were sold for one hundred dollars each in 1912 and 1913, a very few sold in 1914. He purchased the last bunch in February of that year. He bought them under contract. He paid five per cent cash. The property which he bought was all of block 2, lots 21 and 22 in block 1 and lots 1 to 12 inclusive in block 3. They sold practically all of the lots marked on this plat. They sold for less than the prices marked. The lots sold for the following prices: Lot 10, a thousand dollars; lot 9, fifteen hundred dollars; lot 8, twelve hundred dollars; lot 4, twelve hundred dollars; lot 3,

fifteen hundred dollars— On this, purchaser forfeited his contract; lot 2, sold for twelve hundred dollars, but this contract was also forfeited; lot 5, for one thousand dollars; lot one was sold for eight hundred dollars, and lot 6 sold for a thousand dollars. These lots were 637 by 301 feet. These lots are not listed in defendants exhibit "33", nor on exhibit "34". In explanation thereof, witness says: "No, sir, because the same prices rule to-day. Q. What do you mean by "The same prices rule to-day? A. We are selling them at the same figure now as marked there". Wherever there is a pencil mark on exhibit 34, that is a correction of the white ink mark.

Q. Referring to exhibit 33 again, what sales of any property in this exhibit can you refer to within the period from 1912 to 1914?

A. You mean of lots?

Q. Of any of these tracts if you will take your list.

A. I referred to all those town lots.

MR. RIDDELL: Let the record show that the witness has a book here, and you can take his original books where he sold the town lots if you want them.

MR. PETERS: Which town lots?

MR. RIDDELL: The town lots that he marked on exhibit 33. You may have it for that purpose if you desire."

Witness is handed exhibit "33" and asked to state what sales of properties on that list he made from 1912 to 1914, or knew the terms of. He says "The east half of the east half of the northwest quarter of the southwest quarter of section 17, township 30, range 3 West, ten acres, were sold in 1912, to C. E. Lonsberg, at one hundred and ten dollars an acre, and another ten acres alongside of it was sold to Mr. Hamilton for one hundred and twenty-five dollars". That was in 1912. Witness has only valued it at a thousand dollars, because, he says, it is not as good as the other ten alongside of it. His valuation, he says, is not based upon his experience with sales, for many times people give more than the land is worth. Some-

times they get it for a little less. "Q. Your valuations are based upon your judgment of what a lot is worth, and not upon the sales upon the market?

A. Yes sir. One ten may be in the marsh, and one may be drained and a ten alongside of it not drained, and if they sell that to a non-resident, and show him the books, or a picture of it, they get a big price for it."

"Q. This exhibit "33" is made up in that way on your own judgment?

A. Actual knowledge of the land, and having been on it and been conversant with it for the past 12 years.

Q. And not from the marks on the property, not at what it sold for?

A. To a certain extent, yes, sir. I think it is a fictitious value quite often, and if it will sell for that it is worth it.

Q. Then if it sold for twelve hundred and fifty dollars, that tract—why did you claim it only worth eleven hundred?

A. Because since then it has grown up with willows. It is in the sub-irrigated district, and he has not cultivated it, and willows have grown up."

Witness further states that other sales known by him were the northwest quarter of the northeast quarter of section 18, township 30, range 3 West, contract to sell for six thousand dollars. Witness places a valuation of it on his list of four thousand dollars.

Objected to by Mr. Riddell for the defendant, because it was not an actual sale.

A small payment was made on it. Most of the high priced sales are on time. That has been the case of the majority of the sales throughout the country for the last three or four years.

Witness is referring to photographs, and states that the Roy Stone place was one that he referred to as being two hundred dollars per acre, that is, including the improvements. He said, "that is a very fine place, highly improved." That is the one that he particularly referred to. These numbers 5 and 7 refer

to properties which he had listed; that is, witness presumes they do. They are in his partner's handwriting. Witness cannot fix the date on which the statements were written on the backs of the photograph of Sequim property. He does not recall having delivered them to Mr. Grasty, but thinks he probably did deliver them; he would not swear that he did not. He wrote on lots of them, and left them in the office, and they gave them out. This was about the spring of 1914. Witness knows that he wrote it in 1914, because they did not have those photographs until March, 1914.

REDIRECT EXAMINATION.

On redirect examination the following occurred:

“Q. (Mr. Riddell) You know K. O. Erickson, do you?”

A. Yes.

Q. Do you know his general reputation in Clallam County?

A. Yes, sir.

Q. Is it good, or bad?

MR. PETERS: I object to that as being incompetent, immaterial and irrelevant.

MR. PETERS: And the following question was asked: ‘Q. Do you know his reputation for truth and veracity?’ We made the objection because Mr. Erickson was not on examination, and therefore he could not be impeached.

THE COURT: Mr. Erickson did not testify at any stage of the proceedings, did he?

MR. PETERS: No.

MR. RIDDELL: He is a former County Commissioner, but acted as detective for these men.

THE COURT: The objection is sustained. No one quoted him in giving testimony, did he?

MR. RIDDELL: Yes, sir; Mr. Keeler testified to a conversation with him.

MR. PETERS: I will withdraw the objection. If the Court on a review thinks that Mr. Keeler could impeach the honesty of anybody, I will let it go at that.

Q. Is it good or bad?

A. His word is no good; it wasn't with me."

Witness says that some of the property that he sold in Dungeness is just opposite the property shown in plaintiffs' photograph, exhibit "V," the left hand corner. The witness makes a lead pencil mark on the photograph at the place where it adjoins the property he sold. It was one hundred and forty-nine acres, sold for six thousand dollars, highly improved; included a nice, fine two-story modern house, barn, water system and pumping plant and so forth. The sale was in 1912, to James Dick. This property is near Dungeness, a little over a half mile from the school, and is right on the river. The Roy Stone place is marked on the front of plaintiffs' exhibit "U," with a red mark. The price for this, of two hundred dollars an acre, included all the improvements, a modern house, a barn pumping plant, concrete milk house, private lighting system, and other improvements. (This price did not include live-stock, horses or implements.) These improvements were included in the price of two hundred dollars an acre. The land was valued at one hundred to one hundred and twenty-five dollars an acre. It was assessed at from sixty to seventy-five dollars an acre. It is land of that character that the witness in plaintiffs' exhibit "U" referred to as assessed in that manner.

Referring to witness' sale of his hotel property, he says that besides the lots and the land, the stock, fixtures, buildings, business and everything else were included. He had had the property six or seven years. The good will was included. It was the only hotel there. The sale at \$9,000 had no relation to the actual value of the property outside of a business standpoint. The terms of sale were two thousand dollars cash, and the balance at seventy-five dollars a month. Witness admits the suggestion of defendants counsel that real estate is subject to speculation, the same as grain, in Clallam County.

In listing a property with witness, the owner places a valuation, and witness places a valuation on it. They sell it on commission, and take options, and speculate on real estate themselves. In listing the

McClay estate property, there went with the land whatever timber there was on it, buildings, fixtures of every sort. They had just completed the road through the McClay estate, built at an expense of three thousand dollars. The ten acre piece of the McClay estate which sold at \$50.00 an acre was partly improved and contains the Dungeness Logging Company's headquarters, all their improvements and buildings and logging stuff that is on it. They have their camp on it.

“Q. (Mr. Ewing) In order that any confusion may be eliminated which may have been injected into the record as to the manner in which you made your statement, exhibit “33,” where were you when you put those valuations on?

A. I have been thinking of the valuations,—I was asked to put valuations on property when I first came to Seattle last Wednesday.

Q. Did you have access to the assessment rolls when you did that?

A. I did.

Q. Did you use the tax rolls in making your valuations?

A. I used the tax rolls for the purpose of getting descriptions only.

Q. And for no other purpose?

A. No, sir.

Q. The descriptions and the ownership?

A. The descriptions and the ownership. I could have placed each of the owners and the valuations without regard to the descriptions, but you said you wanted the descriptions and I had to go to the tax rolls to get them.

Q. That is it, we wanted the description away from the assessment roll?

A. Yes, sir.

Q. That is the way you did it?

A. Yes, sir.

Q. Did you make any notes mentally or otherwise from the assessment rolls of the values at the time you made those valuations?

A. No, sir, I did not.

Q. Did you get any valuations on the assessment rolls prior to the time you dictated your statement of valuations to the stenographer in room 420 of this building?

A. No, sir, I haven't yet.

RECROSS EXAMINATION.

BY MR. EARLE:

Q. What is your valuation on the improvements of the hotel property?

A. About thirty-five hundred dollars. I might say, to help you out, that that piece is under assessed in my judgment.

Q. To what extent?

A. Well, that is what I consider the improvements worth, \$3500, and the lot is about \$450.00.

(Witness excused.)"

LEWIS LEVY, a witness on behalf of the defendants, testified as follows:

DIRECT EXAMINATION.

Has lived in Clallam County for twenty years, in the real estate business; has been engaged so for fourteen years; has bought and sold residence and business property; is familiar with the real property values in Port Angeles.

Witness is handed defendants' exhibit "35," which is a list of property values estimated by him as of March 1st, 1914. He says, the attorneys asked him to place the values on property, and he made out a rough sketch on a piece of paper, of which he thought was his best judgment of values. He did not see the assessment rolls, but made the valuations away from those rolls, and quite independent of them.

"Q. In making the tabulation just describe how it was done. You read your valuations to the stenographer, did you not?

A. I wrote it out on a piece of paper, and she copied it.

Q. The assessment roll valuations were made from the books direct?

A. I do not know how they were made; I did not see it.

Q. So you made, as I understand, no comparison of the estimates of valuations at which you put on the property with the assessment roll?

A. Absolutely none."

Witness says, this list contains a correct statement of his valuation of the property there listed. The same is offered and received in evidence as defendants' exhibit "35."

Witness states that lot 2, block 31, of Norman R. Smith's sub-division, which Mr. Ware, plaintiffs' witness, valued at six thousand dollars, was sold, so far as witness knows, for twenty-five hundred dollars.

On cross examination by plaintiffs' counsel, witness admits that he was not connected with the sale in any way, but knows this only through the statements of Mr. Lauridsen. Objection was made to it as hearsay evidence, and plaintiffs moved to have the answer stricken.

Witness says that he was acquainted with the sale of a part of lots 7, 8 and 9, block 19, Stratton's sub-division. He sold them and the improvements thereon to a man by the name of Salmon, for the sum of fifty-five hundred dollars. (The witness, Mr. Ware, had placed a value of three thousand dollars on lot 8, and four thousand dollars on lot 9.) The sale was made in the boom time, in the fall of 1912.

Q. Mr. Grasty in answer to a question propounded to him testified as follows:

"Did you talk with any of the citizens in Port Angeles on those occasions when you examined this matter?

A. Yes, sir, I did.

Q. What ones?

A. Mr. Lewis Levy, I should say, was one.

Q. Was he a citizen of Port Angeles?

A. Yes, sir.

Q. Did you ever talk with him on those occasions?

A. Yes, sir.

Q. What was that talk about?

A. The talk was about real estate values in Port Angeles, both assessed and actual.

Q. What was the substance of it?

A. Mr. Levy pointed out that the actual value of the property had nothing to do with the assessed value; that the assessments were very low, and that their reasons for keeping the assessments down was for the purpose of not allowing the State and County to take too much money away from Port Angeles in the maintenance of the County and the State. In other words they made it their business to not let anybody get any money out of the city, or out of them that would not inure to their benefit. In other words, anything that did not inure to their benefit out of which they should receive no direct benefit.

Q. Did you get a letter from Mr. Levy along those lines? State your version of your conversation with Mr. Grasty?"

Witness received a letter from Mr. Grasty, saying that he was in the loan business, loaning money, and he wanted to know what chances there were for loaning money, or words to that effect; and witness replied that there were chances to loan money, that there was an Elks Lodge in Port Angeles that wanted money to build a good sized building, and the amount wanted was, he thought, forty thousand dollars; and Mr. Grasty wrote and said that he would come down in a few days to Port Angeles. He arrived in Port Angeles, and came very pleasantly and shook hands, and witness told him about the loan. This was in April, 1914.

"Q. You said he came into the office, now go ahead?"

A. We talked over the matter of loaning the money to the Elks and of course, he made the same statement as in my record there, and he went away and was looking around town, among the different people. He was in my office a number of times on that same subject.

Q. Just what was the subject of his conversation

with you; was it confined just to that Elk Building?

A. Mostly to the Elks Building; I think one other man by the name of Krupp, wanted to get a loan, the same kind of a name that that fellow that manufactures guns for the German army, I believe.

Q. In his conversation with you what inquiries did he make about assessments of the real property in Port Angeles?

A. He did not make any inquiries the first day, if I remember right. He was around town looking around among the different real estate men and in the banks, and then he came back and mentioned this: he says, "How is that that there is so much discrepancy between the assessed value of property and the value which the people put on the property?" "Well," he says, "you know I can't make any loan of that kind unless I have some explanation to submit to my clients. I must give some reason." And he talked on those lines; and he came in and went out at different times, and he insisted on getting some reason, some explanation, so that he could submit it to his clients, he said in order to get a loan. He said, "I have been around town, and I find that your name stands pretty high among the people, and if I have any business here I shall do it through your office." Of course, we talked about different other things, and I said to him,—he still insisted on getting some sort of an explanation, something that he could submit, and I said, "The assessment here is the same as they assess in the State of Oregon or in other places." I said, "If you will look around the other part of the State you will find that the assessment is about the same. That is, Port Angeles is getting just as high assessment on its property as any other town of its size," and he disputed with me on that subject. He says, "No, they don't do it that way in Oregon. They put property away up, away up." Of course, positively I could not say what was done in Oregon; but I knew that Washington was practically the same all over the State, because the tax commissioners of the State, had given Port Angeles and Clallam County a high standing for

its assessed valuations. Well, he kept on insisting on my giving him something; so I didn't know what sort of a letter to give him.

Q. Did he ask you for a letter?

A. He did.

Q. In that conversation that you had with Mr. Grasty, who directed the conversation and indicated the channel that it should follow?

A. It was Mr. Grasty.

Q. What channels was it always directed into?

A. It was directed into the giving of some explanation, something; he must have something. He could not make any loan in Port Angeles unless he had something to explain the discrepancy.

Q. What if anything, did Mr. Grasty say to you about the difference between the assessed and the actual value upon your building on the corner of Laurell and Front Street?

A. He did not say anything.

Q. In Mr. Grasty's testimony he testified as follows: "Q. Was the building there referred to the building that you have yourself referred to as being located on the corner of Laurell and Front Street?"

A. Yes sir, it is a frame building. Q. What further conversation did you have with Mr. Levy on this subject?

A. I had several conversations with Mr. Levy with respect to receiving applications for loans; and in this connection I naturally had to take up the subject of the actual and real values of the property, which, of course, brought out the fact that the assessed value, and the real value were so far apart—Well, it was rather remarkable."

A. Well, he asked me for an option on my corner. He said he could make a sale. At first I didn't care to give him any option, and finally I concluded I would give him one, let him make a try and see whether he could sell it, but as to valuation assessments or actual value, or ratio on that corner proposition, it was never mentioned.

Q. Now, you say you gave him a letter pursuant

to his request, what suggestion did he make as to the contents of the letter that he wanted you to give him?

A. He didn't make any suggestion as to the contents. I made it up out of my own mind.

Q. Didn't he indicate what the letter should contain?

MR. PETERS: I object to that as leading.

A. He wanted some explanation. He did not seem to care what kind of an explanation I give him. So I had to give him something.

Q. I hand you plaintiffs exhibit "N"; I will ask you to look it over and see whether or not that is the letter which you gave him?

A. That is the letter—that looks like the letter that I wrote.

MR. PETERS: That question refers to plaintiffs exhibit "N"?

MR. EWING: Yes, sir.

Q. (Mr. Ewing) In what way, if at all, had you been connected with the assessors office in Clallam County?

A. Not in the last five or six years.

Q. What county office have you held in Clallam County?

A. I assessed the town in 1910, I believe."

Witness says he believes he assessed the town in 1910, as a deputy assessor; has held no county office since that time; was a democrat, is now a republican; has lived in Clallam County off and on twenty-eight years; is acquainted with Mr. Hallahan, but was deputy under his predecessor, Mr. Govin. Witness knows Mr. Babcock, Mr. Hansen and Mr. Lotzgesell.

Witness never heard of any conspiracies, or combinations charged in the plaintiffs bill. Such does not exist to his knowledge, and never did.

CROSS EXAMINATION

On cross examination witness says he made this memorandum for his list of valuations of Port Angeles property on Wednesday night here in the court house, up in the room used by Mr. Hallahan and others of the defendant, where they had the various books, the

assessment rolls, etc. Witness was furnished a list of property to look at. Counsel for defense states that he himself, furnished the witness with a description of the property on which he desired values. Witness says he didn't look at the copy, but took a lot of sheets that were lying on the table, and wrote out what he believed to be the valuation of property in 1914; had no books to refer to, no sales record, no memoranda what ever. It probably took him a half to three quarters of an hour to write it out. Witness at the time knew that the question in this case was largely one of the fairness of the assessment of Port Angeles property for 1914. He says he did not refer to the assessed valuations of property. He saw no assessed valuations. He did not know what valuations had been placed thereon by Mr. Ware.

“Q. Why didn't you make up the list for assessed valuations of 1912?”

A. I could not make out a list.

Q. Why?

A. Because there wasn't any tangible value of property in the city of Port Angeles, March 1st, 1912, and prior years.

Q. It didn't have any value at all?

A. You simply could not make out any tangible value.

Q. How do you mean, “You could not make it”?

A. Because it had no intrinsic value.

Q. It had no intrinsic value whatever?

A. No sir.

Q. And your lot that you offered for sale to this man Grasty for \$30,000 had no tangible value in 1912?

A. It did some, but not exactly what you might call a positive value.”

The flurry in real estate referred to occurred in the fall of 1912, and ceased in the latter part of February, 1913. Values did not then drop clear back to what they had been in 1912, but dropped considerably; but the property was much stronger in 1914, and the latter part of 1913, than it was in 1912. During the flurry some of the values, probably went four or five

times as much as they were worth. After February, 1913, they simply sagged back to what a man might call some sort of tangible value. They remained practically the same until the fall of 1913. He does not think there was any change in value from the fall of 1913, to the spring of 1914, and from the spring of 1914, around to the present time, they remained the same.

This big mill of Mike Earles, the foundation was started in June, 1912. From then they proceeded continuously with its construction, and at the time they started the building of it, it was understood in the community that it was to be a big million dollar property, and it was then supposed to employ from a thousand to twelve hundred men; some people said three hundred. Witness thinks the mill was finished in July, 1913.

The Milwaukee railway started to build into the town in the fall of 1912. They expected to build sixty-five or seventy miles both ways, east and west. The railway was built by the Erickson Construction Company. Some people know that it was the Milwaukee road, others did not. At the same time there was the Olympic Power Company's building. Witness admits that was a great big institution, a million dollars or so involved in that. That began in 1912, and proceeded continuously. It blew out in 1912, but was finished about a year and a half ago. Witness admits that all these three districts did create a labor market, and a real estate market in the fall of the year; but by the spring of 1913, a year before these things were completed, the market bottom fell out.

"Q. Then that was the reason that you did not give any values for Port Angeles City property in March, 1912, because there wasn't any value?

A. There wasn't any value.

Q. You could not give any value then?

A. No sir; you could not positively say that that lot would bring a thousand dollars, because we did not know whether you could get it.

CROSS EXAMINATION

CONTINUED BY MR. EARLE:

Q. Mr. Levy, do you recall the value that you placed on lot 19, of block 15, of the townsite without referring to any memorandum, what would you say that would be, a lot next to the corner of First and Laurel Street?

A. You mean in the down-town district block 15?

Q. Block 15 of the townsite, and lot 19 of the block?

A. \$6000.00.

Q. That would be your idea of the value of it in 1914?

A. Yes, sir.

Q. Were you acquainted with the sale of that lot by Mr. Christensen in the bank there for \$9500.00 in the fall of 1912?

A. Personally I did not know.

Q. You did know that such transfer took place?

A. I do. It was the report, but personally I could not say.

Q. Are you acquainted with Mr. Glines of the Olympic Power Co.?

A. Yes sir.

Q. How long has he been connected with Port Angeles in a business way?

A. Since the power company started, a little while before that.

Q. It was about his first connection with the town?

A. Yes, sir.

Q. Is he intimately associated there with Thomas Aldwell of the Olympic Power Company and others?

A. Yes, sir.

Q. Are you personally acquainted with the sale by John Hansen to Mr. Glines of that property of Mr. Hansen's on the corner of Front and Laurell Street, lots 7, 8 and 9, of block 16, Norman R. Smith sub-division for \$50,000?

A. I have no personal knowledge of that. Of

course there was a report around town. Personally I had nothing to do with it.

MR. RIDDELL: Are these cash sales you are speaking of?

MR. EARLE: Partly cash and partly on time.

MR. RIDDELL: We object to the inclusion of them in the record as not the proper measure of value.

MR. EARLE: If Mr. Glines purchased that property from Mr. Hansen for \$50,000.00, would you say, Mr. Levy, that the lots brought a fair market value?

A. I think they brought a good big price.

Q. Would you think that that was a high price?

A. A lot of old frame buildings."

Witness further states that he has placed the valuation of ten thousand dollars on his lot 1, block 15, and that is the lot that he gave Mr. Grasty the option on at Thirty thousand. Witness sold this lot on the 3rd of July, 1914, for Twenty-five thousand dollars, ten thousand dollars cash, and the balance on eight annual installments, with interest at six per cent per annum. On March 1st, 1914, that property was bringing witness in over two hundred dollars a month rental. In making out his tabulated statement of the values of those properties (exhibit 35) witness knew of lots that could be had for so much money and then placed the value on the rest of the lots just the same. Witness says that he based his estimate of the valuations of these property on the basis of a man having a lot, wanting to sell it, being not compelled to sell it, to a man who wanted to buy and was able to buy, but was not compelled to buy.

"Q. Do you recollect whether in making the assessment on the Port Angeles townsite in 1910, you made any raises, were there any considerable changes made at that time, or did the assessment stand?

A. I think there was, I think I raised it considerably, and I had the people on my back continuously for six months or eight months. I was being kicked clean around from one end of town to another.

Q. That is one of the reasons why you are rated as a "has been" in politics?

A. I left entirely. I have no politics for me. They would not elect me, because if I ran for office they would be afraid I would do something."

The valuations made by witness upon the lots in his list are valuations on the ground values only. Witness thinks that the market value of real estate, while fluctuating back and forth remained practically the same between 1910 and 1912, until the flurry came in 1912.

MR. RIDDELL: You have the original memorandum from which he made this statement. You don't care to cross examine on it?

MR. PETERS: I find they seem to be tabulated in exhibit 35 the same figures as the property in the detailed list of memorandum.

On re-direct examination by defendants, witness says: to the best of his memory, the Mike Earles mill was completed in the first of July of 1913.

Witness was born in Poland; lived in the United States forty years; admits that his English is somewhat broken. Witness is asked by plaintiffs' counsel to explain the terms used by him on cross examination as follows:

"Q. Would the terms be more correctly described by you as to the value, be better terms, "Speculative value," rather than the term used to Mr. Peters?

A. Between what time?

Q. Between the fall of 1912 and 1914?

A. Call it a boom, plainly speaking, speculative, pure and simple; just as you like, but I call it a boom.

Q. You say that there was no standard price, or no standard market value in answer to his question?

A. Before March 1st, 1912.

Q. Wouldn't a better term for that be "stable market"?

A. Standard and stable are the same thing."

Witness being asked to give the full particulars about the sale of lot 1, block 15, of the townsite says: "Mr. Coupler was putting up a building on the end of

the lot that would cost between seven and eight thousand dollars, a concrete and brick building, on a lease with witness, on the terms of rental, sixty dollars a month for the first five years, seventy-five dollars a month for the second five years, and then an appraisal for an additional ten years, and the building to go to the property at the end of the term. The building was put up without any expense to the owner, and was included in the sale referred to.

On recross examination witness says that this lease was made in the month of May, 1914. The space with the Coupler building on is bringing in a rental of three hundred dollars a month.

(Witness excused.)

C. C. HENRY, a witness for the defendants, testifies as follows:

DIRECT EXAMINATION.

Witness has lived at Port Angeles about thirteen years; has been engaged about eight years in selling real estate; says he has done a good deal of real estate business, probably as much as anyone in Clallam County. Witness says he owns probably 950 pieces of real property.

Plaintiffs cross-examined witness as to his competency.

Witness never maintained an office in Port Angeles; does not accept listings on other peoples' property. The most of the property he sells is his own, which he acquired on tax sales. Most of this property is "wild cat" property. Witness knows of a few sales by other owners. His business consists largely in selling property to people by getting acquainted with them, and sometimes he lists property with other people to sell, but he doesn't sell for others on a commission. Witness says that most of this property of his was bought under foreclosure of tax sales.

Witness is familiar with the valuations of real estate in Port Angeles and was familiar with those valuations on March 1st, 1912 and 1914. Witness being asked to state how he handles his business says,

that he buys delinquent tax certificates and when they need to be foreclosed forecloses them and holds the property until he can sell it; thinks he has sold from 150 to 300 pieces of property since he has been up there. Witness has no other business than what he has above detailed. Was a government mail contractor for about eight years. That was his reason for being there.

Witness presents a list of tabulated valuations that he has made, of Port Angeles property, which he says is a fair statement of his opinion as to these values. He says that he made it up by getting the location of a property and putting down his estimate of the value, without reference to the assessment roll. He did not refer to the assessment rolls at all.

The plaintiff excepts to the qualifications of the witness as an expert.

The list is received in evidence as defendants exhibit "36".

DIRECT EXAMINATION. (Resumed)

Witness is asked:

"Q. (Mr. Ewing) A man named Grasty has testified in this case particularly with reference to you as follows:

"Q. Did you meet or talk with a man by the name of C. C. Henry?

A. Yes, I did.

Q. Where did he live?

A. Mr. Henry lives in Port Angeles.

Q. And he has lived there for a great many years?

A. Yes, sir. Mr. Henry came to me.

Q. Did he have property there?

A. Yes, sir.

Q. Any considerable amount of it?

A. Mr. Henry had—well, he stated to me that he came to Port Angeles with four cents in his pocket; that during his residence there he had made forty thousand dollars.

"Q. What, if anything, did he state to you with

reference to the discrepancy in assessed values and actual values?

"A. Mr. Henry submitted to me a list of property in Port Angeles, and also a piece of timber land, timber property, in the western part of Clallam County. This piece of property was twenty miles, this piece of timber property was twenty miles from the ocean. I made it a rule to ask everybody for their tax receipts. I made it my business to ask everybody who applied for a loan to show their tax receipts in order that I might know the actual taxes they were paying. In this connection he was paying taxes on Port Angeles real estate at a valuation around 10% of its actual value, but over in the timber section of the country he was paying taxes over 50% of its stated value; and I said to him, "Mr. Henry, why is there such a wide difference in the assessment of the Port Angeles property, they being so low here, and your being assessed at a much higher rate in the timber section?" And Mr. Henry stated to me, "Mr. Grasty, the officials here have entered into an agreement among themselves to tax the timber interests higher than anybody else in the County. He said they had made it their business to hold their taxes at home down, but to make those rich eastern timber concerns operate. In other words, their object in assessing them so high is to make them cut their timber, and thereby bring benefit to the people of Port Angeles." Do you recall meeting Mr. Grasty?

A. Yes, sir.

Q. Under what circumstances did you meet him?

A. I had never seen him until he came across the street. I met him in the street, and he asked me some of these questions about values, but more particularly, he wanted to loan money.

Q. What are the facts about the conversation that you had with Mr. Grasty?

A. Well, he was quite intent about talking about values, while I was perhaps still more intent about borrowing some money from him. It was at a certain time of the year when I saw Mr. Grasty that I could

use some money at the percentage that he talked about to a very good advantage. It was right prior to June 1st, when I have a few dollars I invest them, and at no other time of the year I can do it so advantageously as that one.

Q. What was that investment?

A. That would be the first of June when they issued delinquent tax certificates.

Q. So, as I understand you, you were particularly interested in borrowing money from him?

A. That was the only thing I wanted with Mr. Grasty.

Q. What are the facts with reference to your having stated as Mr. Grasty testified, that the officials there have entered into an agreement among themselves to tax the timber interests higher than anybody else in the county? He said, "They had made it their business to hold their taxes at home down, but to make those rich eastern timber concerns operate. In other words, their object in assessing them so high is to make them cut their timber and thereby bring benefit to the people of Port Angeles." Did you, or did you not, make the statement to Mr. Grasty that he has ascribed to you?

A. I did not.

Q. Do you own any timber land yourself?

A. Not very much, very little.

Q. Is it taxed on any different basis than any other property that you own in Clallam County?

A. I do not think so. I am not aware that it is. I do notice in the statement that he says that it was assessed at one-tenth the value of the property. I do not believe I ever got such a low rate to me as that. I failed to know about it."

Witness is a republican; has not followed the political campaigns, or kept in touch with them; knows Mr. Hallahan, Mr. Lotzgesell, Mr. Babcock, and Mr. Hansen,—voted for some of them. Witness does not know of, and never heard of any such conspiracy or confederation as is charged by plaintiffs' bill, or rumors

of such; does not think that such agreement or conspiracy existed.

CROSS EXAMINATION.

Witness says he had no talk with Mr. Grasty on the subject of timber assessments; would remember it if he had; had no talk with Mr. Grasty with reference to the rate of assessments in Port Angeles.

"A. My purpose was to get a loan from Mr. Grasty, and I met him coming across the street, and he spoke to me, and he wanted to know if my name was Henry. I told him it was. And he started to talk to me. He mentioned this Elk's loan, but he did not dwell on that so much, and spoke about loaning some money. I tried to negotiate the loan with him on some property that I had, but he did not look upon the property as being valuable enough to loan very much money on, and too scattered. It was not worth enough in his opinion so as to justify him in making me a loan."

Witness admits that he afterwards called on Mr. Grasty at the Olympic Hotel, on Sunday; admits that he might have submitted a list of his property with the values placed on them for the inspection of Mr. Grasty. Witness does not recall having told Mr. Grasty that the witness did not want Mr. Grasty to say anything about what the witness had told him, because it would get witness "in bad" with the people with whom he was doing business; he does not remember saying anything like that to him. He does not remember talking with Mr. Grasty about the timber assessments. Thinks there was one description of timber property in the list hand Mr. Grasty. Witness does not think that he told Mr. Grasty that they had been keeping the assessments down on local property, and keeping it up on timber; would say that he had not so stated to Mr. Grasty. Thinks that the assessment on Port Angeles property was at the same ratio of its value as the assessment on timber; because he felt that it was assessed high enough. Witness submitted a list of valuations of property to Mr. Grasty to get a loan from him. He said that those

valuations were a fair estimate of the market value.

Defendants demand that the plaintiffs produce the list and give it to the witness to testify from, if they have such a list. Plaintiffs state that they prefer to test the witness' memory without such a list at present. Witness was asked whether the valuations he placed on the property at that time were the fair market value, and answers he presumes they would be. They might run a little high.

Witness says that he does not think that he would place a false estimate on property in order to secure a loan on it, but that he would place them high enough, not too low. He would mean to be reasonable about it, but perhaps he would be willing to take less for the property than he was valuing it at at the time; thinks he would put them up more than ten per cent above what he would consider the fair market value. Witness admits that he owns lots 4 and 5 of block 276 of the townsite; thought that they were worth about a thousand dollars March 1st, 1914. He has sold lot 5 for four hundred and twenty-five dollars; thinks the lots were worth about the same. He made this sale after talking with Mr. Grasty; would think the properties averaged in value about the same March 1st, 1914, as they did when witness talked with Mr. Grasty, maybe not quite so much. Witness does not think there has been any increase in property in Port Angeles during the last year. There has not been so much action, but values have not gone down.

Witness's attention is directed to a map showing the property, and he is asked the value of lots 5 and 6, block 380, on March 1st, 1914.

Objected to by defendant on the ground that it is incompetent and immaterial, and that is unfair to subject the witness to such memory tests.

Witness thinks these lots would be worth about six hundred dollars March 1st, 1914. Lots 8 and 9, block 338, would be worth six hundred dollars. I own the property. I know what I would take without looking at anything. Lots 9 and 10, block 189, are worth four hundred and fifty dollars. Lots 7 and 8, block

141 four hundred and fifty, or five hundred dollars; block 437, lots 16, 18, 19 and 20, worth one hundred and twenty-five dollars apiece. That property adjoins the city park. Lot 6, block 57, Layton's Addition, worth one thousand dollars. The east half of lot 16, all of lots 17 and 18, block 6, Colony's Subdivision, worth a thousand dollars, I was asking \$1,000 for that something about that time. Lot 4, block 7, of the same sub-division, two hundred dollars; There is a little draw that runs through that. It is probably worth one hundred and twenty-five dollars. Lot 3, block 9, same sub-division, two hundred and fifty dollars. Lots 1 to 5, 10 and 11, block D, Glovers' sub-division, would be worth one hundred dollars, he would take that. He bought them from Mr. Ware for thirty dollars apiece. Lots 1 to 5, 10 and 11, would be worth seven hundred dollars for the seven lots. Witness says that these values that he has been placing on the property was at the time when he talked to Mr. Grasty, and that they were the same the 1st of March, 1914. He does not think they are worth the same to-day. Witness says that he had some property in township 28 N. range 15W., timber land. He had never seen it. He would think it was worth eight dollars an acre March 1st, 1914.

This question is objected to by defendant as not proper cross examination, and is incompetent, immaterial and irrelevant.

There are fifty-four acres, witness says, in the two pieces. It would be worth to-day about twelve dollars an acre. It would be of the same value, witness thinks, March 1st, 1914. Witness' attention is directed to the property in township 30 N. range 12 W. Section 22, the northwest quarter of the southeast quarter, and the southeast quarter of the northwest quarter; the property is worth six dollars an acre. It is eighty acres, and would be worth four hundred and eighty dollars. Witness does not recall whether he put down on his memorandum submitted to Mr. Grasty, the assessed valuation of the property, or not.

"Q. Didn't he says, or somebody say in this con-

versation, or some of the conversations, that he found a large discrepancy existed between the actual value and the assessed value?

A. Yes, sir; he alluded to that.

Q. And didn't you put down these values and also the assessed value in connection with this discussion?

A. I put my values to him that I claimed the property worth, because that was relative to getting some money from him.

Q. Do you recall how much you expected to borrow from him, or wanted to borrow from him?

A. I really do not.

Q. Was the amount stated at all?

A. I do not think it was. I notice that he did not—I considered that he did not intend to loan me the money.

Q. Well, at the time that you put these valuations down you thought he was going to loan you money, didn't you?

A. Yes, sir; he impressed me that way.

Q. You thought at that time that his talk was genuine?

A. Yes sir, I did.

Q. And he was really going to lend you some money?

A. Yes, sir.

Q. What was the amount that you were asking him for at that time?

A. I do not remember.

Q. I will hand you this list to which attention of counsel has been directed at the time you were asked these questions as to value, and ask you if that is your handwriting?

MR. EWING: The attention of yourself has been directed?

Q. In saying, "attention of counsel" I mean that counsel for plaintiff have had it before them in asking you the questions and it was not exhibited to you. He has not presented it to you, and you are asked whether that is your handwriting, those figures?

A. Yes, sir; those figures are.

Q. And the description all is?

A. Yes, sir.

Q. Everything except that that is written in the pencil at the bottom?

A. Yes, sir.

Q. Both columns of figures were yours?

A. I think so.

Q. And they were written by you at that time?

A. I think so.

MR. PETERS: Just pass it to counsel so they may examine it before I offer it.

MR. FROST: When was this statement made?

A. I do not remember the exact date, but it was at the time when Mr. Grasty was there.

Q. Would you say in April, or May, 1914?

A. I do not know.

Q. You have one column marked "assessed valuations"; what year's assessment is represented here?

A. I do not know what year that was.

Q. You do not know whether these figures "assessed valuation" represent the assessment for 1912, or 1914?

A. No, I think 1914, that would be about the time I made it.

Q. (Mr. Ewing) The assessments were not made up at that time?

A. No, for 1912, that would be.

Q. Was there any increase or decrease in the value of property described in here between the first of March, 1912, and the time you had your talk with Mr. Grasty?

A. Not any actual increase. I do not know about the assessment increase. Property would not be worth any more now.

Q. At that time?

MR. PETERS: Excuse me, gentlemen, I was examining the witness.

MR. FROST: That question is improper.

MR. PETERS: That would be orderly when you take him up on re-direct. I understand that the wit-

ness admits that the statement now handed him is his handwriting, and that he made it at the time of one of those conversations with Mr. Grasty.

MR. FROST: The last question I withdraw, if I may.

MR. PETERS: No, let it all stand.

Q. (Mr. Peters) All of it, I understand, is in the handwriting of the witness, except that memorandum which appears to be signed "Grasty", and probably was his memorandum in pencil. I desire to introduce this in evidence.

(Statement above referred to marked plaintiffs' exhibit "CC" and admitted in evidence.)

MR. RIDDELL: That is Mr. Grasty's signature on it, is it?

MR. PETERS: I do not know.

MR. EARLE: It looks like it.

MR. EARLE: (Showing paper) Does that go in as a part of the signature?

MR. PETERS: I do not think that would be.

MR. RIDDELL: If you want the whole thing to go in, if you say this is, we have no objection.

MR. PETERS: He says this memorandum on here is not his. I do not offer that because it has not been identified by him, or vouched for.

Q. (Mr. Peters) You have then the first piece of property on this list with your valuation on as \$800.00, and in the column marked "assessed valuation", you have \$180.00. Now, what was the purpose of your putting down this column of assessed valuations?

A. I presume he required that.

Q. Suppose he did, why did you give it? What impression did it make on you if he required it, when he asked you for it, what impression did it make on you? What did you get it for, in other words?

A. You mean where I got it?

Q. Yes, sir, where did you get it?

A. I would get it off the assessment rolls.

Q. Did you go and get it off the assessment rolls?

A. I certainly did.

Q. Did you get it off the assessment rolls of 1912, or 1914?

A. Upon the date he was there I would think 1912. There would not be much assessment for 1914, but it would be 1912 assessment.

Q. The next item which you gave him was a couple of lots which you valued at \$600.00, and you put those down as assessed at \$170.00? That was much less than half your valuation of the property, wasn't it?

A. Yes sir.

Q. And the next one was valued by you at \$600.00, and you put down the assessment of \$160.00. That was much less than 50% of the value of the property, wasn't it?

A. Well, perhaps the price that I was valuing it at was considerably more than twice as much as the assessment.

Q. That is what I say; it does appear so, doesn't it?

A. Yes, sir.

MR. EWING: We want to enter an objection in there that the comparisons due made between prices fixed by the witness in April, 1914, and the assessment of March 1, 1912, and it therefore affords no proper basis for comparison.

Q. Here is another piece of property on this list that you valued at \$950.00, and you put down its assessed valuation against it at \$230.00. That was less than one-third of your valuation, wasn't it?

A. It was assessed for \$230.00.

Q. That is only \$950.00, valued by you \$950.00, and assessed at \$230.00?

A. I could not help the assessment. I went and copied the rolls.

Q. And the assessment was less than one-third, wasn't it?

A. I paid \$750.00 for that, in cash.

Q. Take this item, you valued this property at

\$700.00, and you put down the assessed valuation at \$165.00, is that not a fact?

A. Yes, sir.

Q. And that is considerably less than—that is about one-fifth isn't it?

A. One-fourth."

Witness admits that land on this list which he has valued at \$1080.00 was assessed at \$740.00. He also admits that the tract described as the northwest quarter of the southeast quarter, and the southeast quarter of the northwest quarter of section 22, township 30, range 12 W. is timber land, and this is valued in witness' list at \$640.00, and is assessed at \$425. Witness admits that the valuations of this listed property aggregate \$7670.00, and that the aggregate assessment was \$2500.00, and that they therefore were assessed at one-third, and less, and that while other lands in this list are assessed at not more than fifty per cent, some of them only one-third of the value that he has placed on them, the timber lands in the list are assessed at at least seventy-five per cent of the values that he has listed them at. Witness says that his property generally in Port Angeles, was assessed at something like 50 or 60% of its value.

Mr. Grasty, he says, in the conversation thought that the townsite property was assessed low. In making reference to those things, he would say that it was assessed lower than the timber lands.

Witness says that he has known Mr. Levy for a great many years. Mr. Levy has been actively in the real estate business, with an office down town. Witness would say that Mr. Levy's judgment as to the value of high class down-town property was better than his own. Witness has been in court during the past week, and has heard the testimony of all the witnesses during that time.

DE DIRECT EXAMINATION By Defendant's

Witness says, referring to the fifty-four acres inquired about in Sections 11 and 12, township 28, Range 15 W. He thinks it is agricultural land, as much as timber land. It is on the Sol Duc River.

Referring to the land in Section 23, Township 30, Range 12 W. Witness thinks there has been a burn upon it.

Witness' attention being called to block 425 of the townsite, says, that he sold two of the lots there in boom times for something like \$225, or \$250 for the two lots. Before the boom, he sold them from \$50 to \$60 apiece.

Referring to lots 4 to 18, in block 66, Laytons sub-division, witness bought them in 1912, for \$1275.

Defendants' counsel calls attention to the fact that they are assessed at \$840.00.

On re-cross examination witness says that he sold the lots in block 425, the first time in 1911.

C. L. HAGGITH, a witness for the defendants, being recalled on direct examination, testified as follows:

Witness being asked to state how he arrived at the value of Hanning Hall, a sale that he testified to, upon the witness stand before, answers:

"A. The property is described as lot 20, block 14 of the townsite. We took an option from Mr. Hansen on the Hanning Hall property at \$10000.00, and sold it for \$10500.00 in the height of the boom of 1912. At that time, or shortly after, the property was rented, the lower floor to the Betx-Larkin Furniture Company for \$25.00 a month, the upper floor was rented to two or three different lodges, and was averaging \$25.00 a month, so that the return from the improvement would not indicate any such value as the property was sold at.

Q. (Mr. Peters) What was the description of that property?

A. Lot 20, block 14, of townsite, the corner of First and Oak streets. Mr. Ware testified that the present value was \$15000.

Q. (By Mr. Ewing) Take the document marked for identification defendants' exhibit "37" and state what it is?

A. This is a list that I compiled at the hotel since I came to this city.

Q. Of what?

A. Of property in Port Angeles showing the assessed valuation for the years 1912 and 1914 with my appraisal for those same years.

Q. Just describe how you made that list?

A. In making this list I had made no previous references to assessments, and attached such values as my judgment dictated.

Q. You made the selection of the property yourself, did you not?

A. Yes, sir, absolutely without solicitation, on any particular property.

Q. State whether or not it is a representation of the various districts in Port Angeles?

A. The lots include the most remote blocks, centrally located property, and mid-way residence property.

Q. So it is typical?

A. It is a thorough representation of the property of Port Angeles.

Q. Going back to the manner in which you made this tabulation, have you carefully looked over the tabulation to see whether or not it is correct?

A. The tabulation is absolutely correct.

Q. And it is a correct reflection of your opinion as to the values of the property shown therein?

A. Yes, sir.

MR. EWING: We offer defendants' exhibit "37" in evidence under the stipulation heretofore made in open court.

(Defendants' exhibit "37" received in evidence.)

CROSS EXAMINATION

Witness states that he has been a partner of Thomas Aldwell since 1908.

Referring to defendants' exhibit "37", witness says, that the first and second pages are residence property; also blocks 327 and 341, on page 4, and all of page 5. The lands on page 3 lie west of the present business section, between that and the mill. Block

12 is practically all in the water. The street between blocks 15 and 16 is the center of town to-day, so that block 12 would be 1710 feet west of the present business section at the nearest point. Block 97, at the top of page 4, is unimproved property of a speculative character. It is right down on the tideflats. It is too far out at present to be of any particular commercial value. It was not bought or sold during the last three or four years. Block 14 of the townsite, the front of it, is all in water, that is, lots 1 to 10, and lots 11 to 20 face on First Street. That is the thoroughfare you reach the mill from, the present residence section, the only street running from the business section to the mill. There is none of the down town business property on this list, exhibit "37".

Q. And yet you stated that you were left to your own resources and no one suggested what you should cover, that you selected this class of property in order that you might cover, as I understand you, all the classes of property in Port Angeles, is that a fact?

A. Not exactly. In the first place I might say I was handed a list, I think similar to what Mr. Henry put in, including the business section and the tide lands running east known as the Fisher holdings.

Q. Who handed you that list?

A. Some of the attorneys for the defense; I should not say they did; I do not know how I got it; but anyway I asked whether I should fill in the values.

Q. Whom did you ask that?

A. I think Mr. Riddell.

Q. Then you did know where you got it, because you had the list before you when you talked with Mr. Riddell, is that not a fact? You had the list that was furnished you by somebody, and you do not know where you got it, and you took this list, and you asked Mr. Riddell in regard to the list some questions, did you not?

A. Yes sir, I asked him if I should fill in the values on that list, and he stated that inasmuch as that list had been used by a number of parties that pos-

sibly it would be better for me to make an independent list, and there was no part mentioned to me.

Q. Well, then he left you wholly to your own resources, did he?

A. Yes, sir, wholly so.

Q. Why didn't you give us a class representing some of the best pieces of property in Port Angeles?

A. Because, as I say, they told me that the business property had been appraised by a number of different parties.

Q. Who did they tell you had appraised it?

A. I know that Mr. Henry had a list, and Mr. Levy had a list of it.

Q. And who else?

A. I do not know that anybody else.

Q. Did you look at Mr. Henry's list?

A. I did not.

Q. How did you know that Mr. Henry's list covered the business property?

A. Because he told me it did.

Q. Who did?

A. Mr. Henry.

Q. Did you hear Mr. Henry in his examination just now say that he had not talked with anybody that was a witness in this case with reference to the valuations of property, did you hear that testimony?

A. No sir, I did not hear that testimony.

Q. If he did so testify, was he right or wrong in that statement?

A. That there was no conversation between Mr. Henry and I regarding the values that he was placing on the property?

Q. Did he tell you what property his list covered?

A. I saw the list. I saw the list that they had down in the office.

Q. Who had?

A. The defendants attorney in this case.

Q. Who else was looking at the list at the same time you saw it?

A. I do not think anybody was. I think I picked it up off of the table.

Q. Was it the typewritten list?

A. Yes.

Q. You took it away with you?

A. No, sir, I did not.

Q. What did you do with it?

A. I put it back on the table where I got it.

Q. What did that list have to do with the selection and classification of property that you made?

A. Absolutely nothing.

Q. Then you were absolutely independent when you took the classes of property that you did select for your list?

A. Yes, sir.

Q. Then why didn't you take some of the best classes of property, business property?

A. As I said, the business property had already been appraised by more than one person.

Q. Isn't it a fact that you were here during the time that Mr. Tom Aldwell testified, were you not?

A. No sir, I was not. I was at home. I came down last Monday.

Q. Do you know that he has testified of appraising the property in this case, do you not; you know that Tom Aldwell on the witness stand was asked if he did not appraise certain property shown in plaintiffs' exhibit "E", don't you, of which that is a photographic copy, designated exhibit "E" in this case?

A. I presume that he testified as to this.

Q. Don't you know that he did?

A. I haven't conversed with Mr. Aldwell about it.

Q. Don't you know from others that he has testified in regard to that property?

A. I do, yes, sir.

Q. Don't you know that he stated when confronted with that list that he had taken at that time a very optimistic view of the situation?

A. No, sir, I do not.

Q. Haven't you heard that?

A. No, sir.

Q. Wasn't that the reason that you kept off,

intentionally, of the property covered by Mr. Tom Aldwell?

A. No, sir.

Q. You are quite familiar with the city of Seattle and its property, Seattle real estate?

A. No, sir, I am not.

Q. If you were asked to give a valuation upon different classes of property, real property in the city of Seattle, and you were furnished a list, and you would leave out property bounded by Yesler Avenue on the south, and Pike Street on the north, and First Avenue on the west, and Fourth Avenue on the east, would you say that you had given a fair classification of property of the city of Seattle?

A. Well, it would not be proof that I had thoroughly overlooked it.

Q. Answer the question.

MR. EWING: Unless you want to make a record on this particular point we will tell you why that was; if you want to make a record I won't make any suggestion.

MR. PETERS: I would rather make my own record.

Q. (Question read)

A. It would wholly depend on the nature of my report, the thoroughness with which I had prepared it.

Q. That is the purpose for which it was prepared?

A. Yes, sir.

Q. But you were trying to give a person the full and fair statement of the values of property according to their class, that would not be accomplished by such a report, would it, by leaving out the very heart of the town?

A. Well, I would not say it would or would not. If I would ask any local real estate firm for a statement, for their statement, of their ideas of appraisals of property values in this town, and they omitted any particular block, or blocks, it would not necessarily follow that they had not given me a representative appraisal.

Q. Will you say that you did not know that Tom Aldwell had put himself in a hole, or had been put in a hole by this plaintiffs' exhibit "E"?

A. I will say I do not know it.

Q. You know nothing about it?

A. About him putting himself in a hole?

Q. What do you know about it?

A. Since I came up here?

Q. Since you came to the city of Seattle?

A. The first day, yes, sir, I had heard that Mr. Aldwell was confronted with certain price lists of property with values attached that had been prepared for Lewis Wiley and Morse at the time they floated their bonds, and that the values, that the appraisals that he had attached thereto were excessively high, I heard that.

Q. And what else?

A. I heard a good many things.

Q. What else about that?

A. I do not know that I heard anything else pertaining to that.

Q. That is all you heard about it?

A. I would not say it was.

Q. What else did you hear?

A. I would not say that I heard any more, Mr. Peters.

Q. Will you say that you did not hear any more?

A. No, sir.

Q. Then tell us what it was. I don't want you to tell anything that you heard from your counsel."

MR. EWING: Put everything in that you heard from us or from any other source.

MR. PETERS: I don't want to make it embarrassing for you, but I would be glad to hear it as far as that is concerned; because what they say is always interesting.

Q. Now, why is it that you have not mentioned, after hearing that matter discussed with reference to Mr. Aldwell's testimony in regard to exhibit "E" here, why is it that you did not put in any of that property in your list?

A. There was absolutely no reason other than what I state.

Q. Now, what would be your valuation then, for the year 1912 of lot 1, block 1 tidelands west of Laurel Street? and gives the following valuation for property inquired about: Lot 1, block 1, Tidelands west of Laurel Street, without improvements, in 1912, \$12,000.00, and to-day, or in 1914, \$17500.00; lot 2, of the same block in 1912, \$4500.00, in 1914, \$6000.00; lot 10 in 1912, \$5000.00, in 1914, \$7500.00, or \$8000.00. An inside lot in that block in 1912, would be worth \$3500.00, in 1914, \$5000. Witness places a high value on the corner lot, for the reason that those lots are three hundred feet deep, and would permit of stores the full length of that frontage. The value of lot 1, block 15, of the townsite, known as the Lewis Levy building, was worth \$10000 March 1st, 1912, \$12000.00 in 1914. Lot 19, block 15, the Christensen lot, in 1912, was worth \$2000.00, That lot sold in the boom for \$9500.00. The 1st of March, 1914, it was worth \$5000.00. Lot 9, block 1, Tidelands east of Laurel Street, was worth about \$12000 to \$15000.00. It won't pay interest on more than that at this time; March, 1914, lot 1 in the same block would be worth \$7500.00, without improvement. Block 16, of Norman R. Smiths' addition, lot 10, March 1st, 1914, would be worth \$7000.00. That is the Aldwell block. Lot 9 in the same block would be worth \$2000.00 more.

A. You are giving me all corners.

Q. I am trying to pick out a few representative corners here.

A. Let me explain to you my idea of the difference, my opinion of the difference between a corner and an inside lot. Now, you take for instance lot 10 in block 16 that you have just mentioned——

Q. Is that an inside or a corner?

A. That is a corner; it is 140 feet in depth by 50 feet frontage, and as I said before about the Day, the other corner, it forms a frontage of 140 feet. You take the next lot to it, lot 11 is 50 feet frontage only by 140 feet deep, and will permit of but two stores

at the most, and my value of that lot would be worth \$2000.00.

Q. Take the next lot, lot 9 there—the lot what is known as the Hansen property, say, was lot 8, of block 16, Norman R. Smith's Addition, on the first of March, 1914, what would that be worth?

A. The vacant lot would be worth perhaps \$5000.00.

Q. And lot 7?

A. About the same.

On redirect examination witness testifies: The high school property is described as lots 13 to 18, block 55, lot 1 to 6, and 13 to 18, in block 68, lot 4 to 15 in block 67, being in Taylor's sub-division, thirty lots. It is adjoining the present court house property. It is about six hundred feet away from the center of town. As compared with surrounding property it is on a par with surrounding blocks. That property was sold for \$6200.00, thirty lots, early in 1912. Mr. Ware represented the administrator of the estate. The thirty lots were 50 by 140 feet each, making about five acres. The sale was not an administrators sale, but was a sale by the heirs, who were non-residents.

(Witness excused.)

JOHN HALLAHAN, recalled on behalf of the defendants, testified as follows:

DIRECT EXAMINATION

Witness says that he didn't make the assessment of the shingle mills of Clallam County, that they were made mostly by deputies. He does not know the condition of the mill machinery of the Fillion Saw & Shingle Mill on the first of March 1912, though he knows the mill in a general way. Says that he knows the Hanson & Glenert Shingle mill.

"A. It was like the average small shingle mill of that capacity exposed out on the woods on leased ground subject to be shifted around. They have been cutting timber off the Indian's land down there, and the Indian has not got title yet from the Government, they paying for the timber by the thousand feet as

they cut. The Indians seem to be satisfied and I presume no protest to the Government.

Q. Is it a portable mill?

A. Well, not exactly portable, but it can be moved, like all other mills of that kind. It is a small mill.

Q. What would you say about its condition March 1, 1914?

A. I would not like to answer the question that way, because I did not see it at that time. I have seen the mill before that time, but that particular time I did not see it myself.

Q. Do you know about the Sturdevant and Pellerin Mill?

A. I would say about that, that that mill has been abandoned. There is no more timber in the locality where it has been operated and no particular use for the mill there.

Q. Do you know when it was abandoned?

A. I believe it has not been operated for two seasons, I think.

Q. Was it operated on the first of March, 1914?

A. I don't think so.

Q. Was it on the first of March, 1912?

A. I believe probably it was.

Q. The E. R. Waite Shingle Company, do you know anything about that plant?

A. Yes, sir, a very small plant, one of the smallest in the County.

Q. Do you know what its condition was in 1912?

A. The mill had been through several fires, the machinery had. I think it was burned out twice within six or seven years, and the machinery has been through those fires, and it has been rebuilt and some parts, I presume, were renewed. It is a very small mill. There were only a few men employed in that mill, a very few.

Q. Do you know about the Howell-Hill-Ray Shingle Company mill?

A. Yes, sir; it is a good deal like the others. It is located away back of Port Crescent on the base of a

foothill. There is some timber in a ravine that runs into the hillside, and they possibly will have timber enough to run them—I am not sure whether they are running this season or not,—but one of the operators told me this fall that they might be able to run two more seasons.

MR. PETERS: We object to what the operators told him last fall. It would be after the assessment.

Q. Do you know about the Skavdal Shingle Mill & Saw Mill Company?

A. Yes, sir, I have seen his mill.

Q. What was its condition on the first of March, 1914?

A. The same condition as the others, without going into the matter technically. The mills are really about the same capacity, some little differences. His mill has burned down.

Q. What would you say about the Brown & Drury Mill.

A. It is located away up on Lost Mountain, close to section 16, and I believe the supply of timber is about exhausted. The owners are in very bad shape financially. There were two parties in that mill, and one of the men died leaving a widow. She had been a neighbor of mine during last winter, and she is now washing clothes for the people living down at Mike Earle's mill for the employees there, and she had to get down to that, and they can't dispose of the mill or the machinery at any price.

Q. The Riverside Milling Company?

A. That is a mill that has changed names quite frequently. I think it is up at Sequim. Does the list show?

Q. No, it does not show where it is.

A. I think it is in the vicinity of Sequim.

MR. PETERS: Mr. Pollock did not testify to that.

Q. The Mason Milling Company, do you know about that?

A. Wes, sir. That mill was called the "Big Four" a number of years ago, and it was quite a large

mill when they located there. They located where there wasn't any considerable amount of timber, and it resulted in a shut-down. The mill has been picked to pieces since that time, until now, I believe, there is very little of it left; one person carrying off a saw, and the other the engine, and another person carrying off a part of it, and I understand the mill has been dismantled. It has been carried away piecemeal.

Q. Was that the condition on the first of March, 1914?

A. I believe that was the condition on the first of March, 1914. There was nothing left to cut shingles of; those mills are all left in the woods, and it would not pay to take them out.

Q. Would you say that of most all of them?

A. Yes, sir. That mill was called the "Big them. The shingle timber in the vicinity of Port Angeles has been about all exhausted, and they would have to move those mills to new locations, and I think it would hardly pay to move that machinery, or, if it was moved, it would be worth very little by the time it reached its destination.

Q. Does that apply to all the mills I have mentioned to you?

A. Pretty nearly all of them, except the Glenert Mill. He might get some little timber for a few years yet; but most of these little mills are located in isolated places where the timber is very scarce.

Q. Do you know the plant of the Port Crescent Shingle Mill?

A. Yes, sir.

Q. What was the condition of it on the first of March, 1914?

A. That is a mill that has been operating, like a good many places, for many years, and it is of larger capacity than any of these except the Fillion's Mill. I believe it is the largest capacity of any mill in the County except Mike Earles' Mill. I believe that it was fairly well kept up, but it is old. In this connection, my understanding of mill machinery is this: that a machine, the life of a machine is about ten years, and

the depreciation is figured accordingly in your calculation. After ten years the mill is supposed to become junk. That is, the machinery is presumed to be junk, and not figured thereafter in your bookkeeping. If you use the machinery for any time after that, it is considered profit. Of course, on all mill machinery there is a pretty severe strain; pieces break; boilers burn out; and the cylinders have to be bored, and if they have to move those cylinders, or the machinery itself, to some place in Port Angeles to bore the cylinders out; in fact, those cylinders have to come to Seattle to be bored, and those mills down there, for that reason are handicapped, and I remember at one time with the city's lighting plant, that I had to come out to Seattle here to get the cylinders bored, and had to shut the plant down for two days until the cylinders were taken here and bored out and moved back again. There were no boring plants down there with capacity to bore the cylinders, and they are working under that handicap. Nearly all of the mills down there are very old.

Q. The Eacrett Mill?

A. The Eacrett Mill and also a donkey engine, that mill is operated by two or three brothers, and they are natural machinists. Now, the engine, the donkey engine has been built up by themselves piecemeal, picked up a piece here and a piece there, and they would come up to Seattle and get parts of it, and they have assembled that machinery themselves. The little old mill is in the same condition. They have built it up piecemeal and got a windmill setting on top of a stump about 40 feet high to pump water for the mill, and they operate probably a few months in the year. There is very little timber where they are. They live near the mill, and they have got their farms surrounding the mill, and it is a side-issue, and in the winter and spring, when they are not busy, they operate the mill.

Q. How is the assessment of the Olympic Power Company made, did you make that?

A. The assessment of the Olympic Power Company was made by me in the year 1914.

Q. Do any other county assessors have anything to do with it?

A. Yes, sir.

Q. What ones?

A. The County Assessor of Jefferson County, and the county assessor of Kitsap County had an assessment, or presumed to have,—I think they have assessments on the power company.

Q. Did you not make the assessment all alone?

A. No. The Power Company is assessed in three counties.

Q. What was the state of completion of the Mike Earles' Mill on the first of March, 1914?

A. On the first day of March, 1914, I believe that was on Sunday, and as I had to put the assessment on the mill for that year for the first time, I felt it my duty, although it was Sunday, to go down there and take a general look around the institution, and I did. The assessment year commenced at noon of that day. I went down there and noticed the condition of the mill. There was very little machinery installed. It was scattered around the plant. The buildings were incompleated, the engines and boilers were not installed, only in part, and the mill itself was in a general way only partly completed. They were starting foundations for new buildings, and so forth.

Q. When was it completed and started in operation?

A. I remember very well that the first steam they got up on the mill was on the 17th day of March, for the simple reason they blew their big whistle on that date, and that was the first time they were able to get up steam and blow the whistle. That is probably all they could do.

Q. When they blew the whistle that stopped the mill?

A. The mill had not started to operate at that time.

Q. When did that start to operate?

A. I think it was in June afterwards.

Q. Notwithstanding the condition the mill was

in on the first of March, 1914, what did you assess it at?

A. I assessed the mill—I probably will have to refer to some figures.”

“Witness: I believe I have the figures. I carried these figures for a year or more in my pocket. They are in concrete form. If you want them in detail, I would probably have to refer to detailed information.

(Referring to plaintiffs’ exhibit “T”)

Q. Now, take that plaintiffs’ exhibit “T” and state what corrections you would make in it. Mr. Hallahan, figure up the total assessments?

A. I have got the totals here which will serve any purpose you might want, in three items. I have got it briefed down. I briefed it up for the Board of Equalization last year.

Q. Give me the item.

A. My estimated number of acres included within his holdings on the first of March, 1914, were 30 acres. These, however, were only estimated, and probably very close to the amount. The 30 acres are assessed at \$15930.00. The buildings, and those holdings are assessed at \$33000.00, and all the personal property in the mill was assessed at \$87450.00.

Q. And the total amount is what?

A. Making a total assessment of \$136380.00. That is in round numbers, the assessment placed upon the mill property, and the personal and buildings for 1914.”

CROSS EXAMINATION

Witness believes that he has visited every shingle mill in the county at one time or another.

“A. I did not visit mills with a view of assessing them; but while paying the visits to the mill I always looked at the mill. While I was assessor I always looked at any class of property in going around the country, when I was visiting to those mills. That applied more particularly to a mill. But I always went around a mill and asked questions and kept myself in touch with their general conditions.

Q. Do I understand from your answer that you did not personally visit any of those mills for the purpose of assessment, but that your visits there were made at some other time, and for some other purpose?

A. No, I did not assess any mills myself excepting the Earl's mill. The mills were all assessed by the deputies. I went over their lists when they were brought into the office, and having previously visited those mills I could tell very well if the deputies were doing the full measure of their duty in placing the assessment.

Q. From your knowledge of the conditions down there would you say there has been any improvements in the shingle mill business, or in those particular properties since the first of March, 1914?

A. Any improvements in the mills themselves?

Q. Yes, sir; would you say that there has been an improvement or no improvement?

A. No, I do not think there has been any improvement, because most of the mills since that time have been shut down; and a mill that is shut down is deteriorating quite rapidly, it deteriorates when it shuts down. I believe those mills are really over assessed; because I find for the four years I have assessed those mills I do not think by an examination of the books it will show that I have allowed little, if anything, for depreciation, and if you will go back four years you will find probably I had the same assessment on the mill that I had four years ago when it was assessed, and that it was assessed at about the same price in 1914. They manage to keep the mills going and turning out the same quantity of shingles as they were several years before, still machinery is wearing out all the time and being renewed and replaced.

Q. At the time you made an assessment on a mill at what ratio of value did you assess them?

A. I attempted to assess the mills on the same ratio I did all other classes of property in 1912, about fifty per cent."

Witness visited the Mason & Babcock Mill property a couple of years ago. He made no memoranda

of it at the time; looked it over just in a general way. It was assessed by his deputy. He visited the Howell-Hill-Ray Shingle Mill last fall, after it had been assessed for 1914. Didn't visit it before.

Q. When did you visit McKee Box Factory?

A. Several times a year. I visited that mill—if you will be pleased to call it a mill,—I heard the testimony given by your expert witness on this particular mill the other day, and it amused me. Saturday evening on the boat going down to Port Angeles I happened to meet Mr. McKee, one of the owners of the mill, and I asked him——

MR. PETERS: That would not be competent what you said to Mr. McKee, or what he said to you.

A. Here is what he said. (Producing a piece of paper.)

MR. PETERS: It would not make it any more competent if it is on a piece of paper than if he stated it. You know enough for that.

Q. You assessed this McKee Box Factory for \$100.00?

A. I presume for 1914. I have not examined my tax rolls myself, and I do not know what you have on your list.

Q. Did you estimate the value of that to be \$200.00?

A. Yes, sir.

Q. I thought you said your deputy assessed it.

A. My deputy put the assessment on, had the party to sign the sheet, but I examine all the work done by my deputies. It is all examined by me; and if the assessment don't meet with my approval I would have it corrected.

Does not remember the Superior Shingle Mill. He visited the Ecret Mill last fall.

"A. Last fall.

Q. That was since the assessment?

A. Since the assessment. I visited it too, before.

Q. When did you visit it before?

A. I could not tell you. It is on the road to the

Lakes, and the Hot Springs, and anybody going along there could not help but see it.

Q. Could you see it from the automobile road?

A. Yes, sir.

Q. That is the way you visited it?

A. No, sir; I went down there.

Q. When did you go down there?

A. Sometime in 1913.

Q. What time did you go down?

A. I don't know.

Q. What time of the year?

A. I could not tell you.

Q. Who went with you?

A. Nobody went with me.

Q. What did you go for?

A. What did I go there for?

Q. What examination did you make of the Ecrett Mill at that time?

A. I have known it ever since it was installed.

Q. What examination did you make of it at that time?

A. I have known it ever since it was installed.

Q. The E. R. Waite Shingle Mill, did you examine that?

A. Yes, sir.

Q. When?

A. At the same time.

Q. What same time?

A. 1913.

Q. On this same trip?

A. Oh, no.

Q. Then you did not examine it at the same time as the Ecrett?

A. No sir, not the same date, no.

Q. You examined it the same year?

A. Not probably in the same month.

Q. Did you go down there for that purpose?

A. No, I did not have to, because all those mills are located close to Port Angeles, and occasionally I would take a trip out in the Country and see those mills.

Q. What memoranda did you make?

A. I did not make any.

Q. And your deputy put the value on it?

A. He put the value on it.

Q. Did you change it?

A. I do not remember that.

Q. The Hansen and Glenert Mill, when did you examine that?

A. Last fall.

Q. After the assessment?

A. After the assessment.

Q. Did you examine it before?

A. Yes.

Q. What time?

A. A year before.

Q. What time did you examine it?

A. In the summer.

Q. On what occasion?

A. I was going down to Port Crescent to look over the assessment down there with Mr. Carrigan who is a member of the State Board of Tax Commissioners, and we had to wait for a train and I went down and looked at the mill.

Q. You looked at the Hansen and Glenert Mill?

A. Yes, sir.

Q. Did you make a memorandum of it at that time?

A. No, sir.

Q. Did you give any memorandum to your assessor, to your deputies after he had assessed it?

A. No sir; he was to seek that information himself.

Q. Did you change the valuations at all?

A. I could not tell you. If the valuation were not correct according to my view of the matter I changed them.

Q. Did you change them?

A. I could not tell you. That is too far back to remember.

Q. Then you do not know so far back? You do not remember distinctly when you went down there?

A. Not distinctly.

Q. You tell me you even stepped away or turned for something else?

A. Those experts took a memorandum.

Q. Yet you can't tell me whether you changed the assessment?

A. Certainly, I can.

Q. What deputy assessed it?

A. In what year?

Q. For the year 1914?

A. W. B. Gould.

Q. Is he still with you?

A. I divorced him.

Q. You are not now assessor, are you?

A. No.

MR. PETERS: It was a snap judgment, wasn't it—

Q. Brown & Drury Shingle Mill, when did you visit that?

A. I visited that last fall.

Q. Did you visit it at any time before that?

A. Yes, sir.

Q. When was that?

A. The year before.

Q. On what occasion?

A. I was looking for votes.

Q. What?

A. I wanted to get elected county assessor, and I went up there to see the boys.

Q. You went up to see Brown & Drury's Shingle Mill?

A. Yes, sir.

Q. Did you make any memorandum of it at that time?

A. No, sir. I examined the mill, however, insofar as I was able to examine it. I am not an expert on machinery, and my examination would only be—

Q. Superficial?

A. Superficial in a way.

Q. You would not know yourself very much

about the character or capacity of machinery if you saw it?

A. I would know the capacity. It is common knowledge what the capacity of all those mills are.

Q. You never bought any shingle mill machinery?

A. I did.

Q. Nor sold any?

A. I did.

Q. When?

A. A number of years ago.

Q. In how many instances?

A. In one instance.

Q. That is the only experience you have had?

A. That is the only experience I have had in buying a mill. It is not a shingle mill, but it is just the same purpose I bought an engine and boiler.

MR. RIDDELL: Does that disqualify him from being an assessor?

MR. PETERS: It might have been a coffee mill, or probably a gin mill; I don't know."

Witness says that he visited the Scavdal Shingle Mill last year after the assessment, and the Sturdevant & Pillerin Mill last fall; says he also visited all those mills prior to that. He made no memorandum whatsoever. His deputies went out afterwards, and turned in their values to witness. Witness had no talk with the deputies with reference to what they found about the mills, either before they went out, or after they returned. Witness can't remember whether he changed any of their assessments on shingle mills, or of any other property. I could not remember it. I do not pretend to remember those things. I would go crazy if I remembered one thousandth part of what happened in the assessors office. I do not pretend to do it. Nobody else don't either. Witness says that he went down and looked about the Mike Earles' Mill on first day of March, 1914. He says, they started the building of this mill after the 1st of March, 1913; because he visited the mill-site in March, 1913, and made the assessment; thinks they started to run the mill in June, 1914.

“Q. Did you take any list of the machinery that was down there on the first of March?

A. No sir.

Q. Did you make an examination yourself as to what machinery was there, as to its capacity?

A. No, I was not qualified to do that.

Q. And its probable cost.

A. No.

Q. Did you make any estimate of the belting that was down there, or the shafting?

A. No, sir; I did not itemize anything. I looked around the mill.”

Q. How long were you there that Sunday?

A. I spent most of the day looking around.

Q. Was there anybody with you?

A. No sir.

Q. Did you make a memorandum of it?

A. No sir, I did not.

Q. When did you put down that assessment?

A. I guess the assessment was placed on that mill about a month, I believe, either the latter part of June or the early part of July that same year.

Q. And after looking it over on Sunday morning, March 1, 1914, you never put down any assessment against it until June, 1914?

A. June probably, or early in July.

Q. Early in July, 1914?

A. It may have been.

Q. Let's fix that. Was it in June or July?

A. I would not say positively, but the record would show it. The records in my office will show when the assessment was made. I do not pretend to carry those in my head.

Q. You carry around when they blew the whistles in your head?

A. That was significant.

Q. (Mr. Ewing) Did you take note of the name?

MR. PETERS: When did you make that memorandum? (Showing).

A. I made that memorandum for the information

of the Board of Equalization in 1914. I had the whole thing in concrete form, so they would not have to look over the mill unless they wanted to, or for my own information, or information of anybody that would ask me questions concerning it, and for your information now. (Handing counsel papers.)

Q. You anticipated that, I suppose?

A. Oh, no.

Q. May I see the rest of that?

A. No, you have all you are going to see.

MR. PETERS: The witness is using a memorandum, three sheets.

MR. RIDDELL: No, sir, not that, he didn't use that.

Q. (Mr. Peters) Then you refuse to let me see the paper which you have in your hand at the time you were testifying?

A. That is my private paper.

Q. At the time you were testifying with reference to the assessment of the Mike Earle's mill, you said that you had a memorandum in respect to it, and then gave your testimony, and now you refuse to produce the memorandum which you had in your hand at that time?

A. You have it there and have all the items in front of you.

Q. Do you refuse to produce it?

A. You have it in your hand. You have got it in your hand.

Q. What are those other two sheets of paper which you had at the time and that you inspected at the time you gave your testimony?

A. I did not inspect them. There was no occasion for it.

Q. Do they concern the Mike Earle's mill at all?

A. No sir, they do not concern it, they may have some bearing on it.

Q. Have they a bearing on the information which you had respecting the Mike Earle's mill?

A. Yes sir.

Q. They have a bearing on your assessment of the mill?

A. Yes sir.

Q. And they are a memorandum that you made in connection with your assessment of the mill?

A. They had something to do with it.

Q. At the time you testified a short while ago, this afternoon, in answer to inquiries of your own counsel, or of counsel for plaintiff in this case, you used this memorandum to refresh your recollection, didn't you?

A. No sir, my memorandum is all right there in front of you.

Q. You had read that shortly before, had you not?

A. The contents of it?

Q. Yes sir?

A. No; there is nothing in there that would help me out anyway.

Q. You say they bear upon this question?

A. They have a bearing on it, and they have.

Q. And they have information in there that you had at the time you put down the assessment?

MR. FROST: I object to the witness answering the question half a dozen times; all the memorandum that he has used is at present in the hands of counsel before him, and it is all a memoranda that he made in reference to, or looked at. Any further examination of the witness along this line is frivolous.

MR. PETERS: I want to indulge in a little more frivolity.

Q. This memorandum you tell me contained information you used in assessing this property?

A. Yes sir.

Q. And you refuse to produce it now?

A. The information?

Q. No, memorandum which you have in your hands.

A. It is not a memorandum, it is private correspondence.

Q. (Mr. Frost) Who is it correspondence with?

A. It is correspondence with the county assessors.

Q. Correspondence between whom and the county assessors?

A. Between myself and other county assessors.

MR. PETERS: In regard to this same matter?

A—In regard to the assessment of mills.

MR. EWING: Do you want to include any other county assessors in this conspiracy? There is a good chance. (No response.)

MR. PETERS: You say there was thirty acres assessed at \$15,130?

A. Yes sir.

He didnt' assess any particular building, but lumped them up. No building was then completed, except the shingle mill. The personal property in the mill was assessed at \$87450.00.

“Q. The largest item that makes that \$87450, is implements and machinery?

A. Yes, sir.

Q. Did you make any memoranda of these implements and machinery that day?

A. No, sir.

Q. Or at any time?

A. No, sir.

MR. EWING: I object to that as incompetent, immaterial and irrelevant, and improper cross examination.

MR. FROST: And because the law which regulates the assessment and taxation of property in the state of Washington prescribes the form of the assessment list which shall be used, and that no detailed list or inventory of personal property is required under the Statute for the State of Washington. When he listed it as “implements and machinery,” he has followed the direction of the Statute.

MR. PETERS: Did you make any list of the implements and machinery that you appraised at \$75000?

A. No, sir, they are lumped up in one lump sum.

Q. What were they?

A. They were implements and machinery. In

the assessment of property, the assessor does not count every hammer and monkey wrench and screw driver that is around the premises. If he did he would never get through with his work. The stuff is lumped up.

Q. You looked over the mill-site that day all alone?

A. I looked over the mill-site all alone.

Q. Did you make no memorandum of it at all?

A. Mentally.

Q. Did you determine then mentally to assess it at \$75000?

A. No, sir, I did not.

Q. When did you determine to assess it?

A. I determined to assess it in the month of June, or July, when I made the assessment and put it on the books finally.

Q. After this visit, the 1st of March, 1914, you made no memoranda whatever of the machinery and implements in there, or any other conditions, and you made no memoranda whatever of the machinery and implements in there, or any other conditions, and you carried it around in your head until sometime in June, or July, of 1914, and then you put the assessment on it?

A. Yes, sir, I put the assessment on it.

Q. This is the assessment you put upon it of \$75000?

A. \$75000.

Q. That is on that machinery?

A. On that machinery.

Q. (Mr. Earle) They began the shingle mill first, did they not, in the big mill property; they constructed the shingle mill first, did they not?

A. I believe they did.

Q. And the shingle mill was in operation in May of 1913, was it not?

A. I do not remember when it started up; I do not remember.

Q. Wasn't the shingle mill in operation practically a year before this lumber mill was finished?

A. It might be; I don't remember.

Q. The shingle mill was completed and in operation, wasn't it, on the 1st of March, 1914?

A. Yes, sir.

Q. It was in operation the 1st of March, 1914?

A. I believe I so stated."

ReDIRECT EXAMINATION (By Defendants)

Witness says in regard to the McKee Box Factory that there is not much change in its condition now from what it was March 1st, 1914; that it can be now purchased for two hundred dollars, for Mr. McKee told witness so the other evening.

Plaintiff moves to strike this out as improper.

Witness says the assessment list for 1914 was completed and the footings made up and balanced on the 1st day of August, 1914. Nobody had general access to his books or assessments until that date, when the books were first turned over to the Board of Equalization. Witness allowed no examination of the books until they were balanced. Witness says that none of the real estate experts who have testified, or anyone else besides his clerk, Mr. Haines, knew what the assessments were for 1914, until the books were turned over. So that when Mr. Henry was talking to Mr. Grasty and comparing values in April 1914, he must have referred to the assessment roll of 1912 or 1913, for he could not have access to the roll of 1914 at that time.

On re-cross examination, by plaintiffs, witness says, the roll that is turned over to the Board of Equalization is simply a copy of the tax books. Witness began to tabulate his assessments probably the 1st of March, and from the 1st of March 1914 until the 1st of April, he was at work on those books and they were in his public office, and they were kept in the same room that one would have had access to if he came to look at the 1912 or the 1910 assessments. Witness denies that they were open there for anybody's inspection. They were kept in the safe at night.

"Q. But durin business hours they were open to the public and just as free where the public might get

them, as for instance, the books for 1910 or 1908, or any other previous year?

A. No, sir, they were not. They were different.

Q. How different were they?

A. Because the public did not know what I was doing.

Q. How did you keep them out?

A. I can't explain to you so you will understand how I done it.

Q. I will try to understand, if you explain.

A. All the timber lands of Clallam County were block work, as figured by the thousand feet. I had my clerks figure on those for a long time, on separate forms.

Q. The clerks figured on what?

A. On the assessment of timber. I had a form to figure this thing out on."

"A. They were figuring the amount of timber on each forty acres, as marked in that form, the number of feet of fir, spruce, cedar and hemlock, fir ties, cedar ties, hemlock ties, and poles, and they figured it out, each item, and the total below, and add the price of the land into it, and when that section was completed it was filed away. It was not for the public record at all. It was after the thing was tabulated and all fixed up, then we transferred that into another book called "The Pencil Abstract Record". We put "improved acres" in this column, "fenced acres" in this column, and the value of the land in the next column, the timbered acres in another column, and the assessment on the timbered acres in another column, the number of acres unimproved land in another column, and the assessment, and the total value of the assessment, and the value of the improvements, if any, and aggregated it and transferred that whole bunch over on the tax roll later on."

Q. When were you doing that work from March first to August first?

A. All the time. It is a big job. Every county assessor knows that.

(Witness excused)

JOHN C. HANSEN, recalled on behalf of the defendant, testified as follows:

DIRECT EXAMINATION.

Mr. Hansen states that he was in the court room the other day when Mr. Darwin testified for the plaintiff in this case, and heard his testimony.

"Q. Mr. Darwin said in substance that in an interview with you in Port Angeles sometime in the spring of 1912, that you said to him that you favored the policy of taxing timber holders so high that they would find it unprofitable to long keep their vast tract off the market; will you state just what transactions and conversations you had with Mr. Darwin at that time?

A. Well, I got a telephone message from the Secretary of the Commercial Club, that Mr. Darwin was coming to the city on a certain day, and that I was appointed, with E. A. Fitzhenry, who is now United States Surveyor General for the State of Washington, and M. K. Meade, who was then Mayor of the city of Port Angeles.

MR. PETERS: The plaintiffs make objection to any statement by Mr. Hansen except in answer to the question as to whether he did or did not make a statement imputed to him by Mr. Darwin, and any other inquiry is incompetent, immaterial and irrelevant.

A. We three were to take Mr. Darwin around and show him the country, So we took an automobile that morning, whatever date it was, I do not know, and we started for Lake Crescent. That is in the south-westerly direction from Port Angeles, and twenty miles away, and on the way we stopped at the Olympic Power Company, which at that time was being built on the Elwah River, the roads to Lake Crescent were not in a very good condition; so the question of roads did come up, were spoken about, and when Mr. Fitzhenry, who has been all over the country many times as an engineer, and so forth, he was telling Mr. Darwin that his county had sixty billion feet of timber. Then the

question was referred to me, why we did not have better roads. I told Mr. Darwin that we expected to bond the County that very same fall for three hundred thousand dollars, if it was possible, and about the timber I told him that we had a very small portion of that sixty billion on our tax rolls, and at that time the county had already started to cruise all of the timber and that we had a large portion of logged-off land directly west of Port Angeles, on the way to Gettysburg, and Port Crescent, and that timber there in that direction belonging to Michael Earles had all been moved without a proper cruise having been against it, and that even the logged off land would be so cruised that the County Assessor's office would have a perfect record of every ten acres and that the same policy would extend through the whole County to the Eastern line, farming land and all. And I explained to him then that in 1911 we had attempted to make some raise by the Board of Equalization, but that we were continually confronted with one man saying that this land was good for nothing, and the other man saying it was worth ten or fifteen dollars an acre, so we were absolutely unable to do anything without a better record. And the result of that cruising has placed now the County in such shape that——

Q. What did you say to him about the cruise? This is a part of your conversation with him?

A. Yes, sir, that everything was at that time under-rated, because the assessor's office was in poor condition at that time. I do not know what I said there, but I did not say that anything would be fixed higher than any other article, that this cruise was purposely being made for the purpose of equalizing the taxation all over the County. That is about all. I was in the front seat and Mr. Darwin, and Mr. Fitzhenry, and M. K. Meade, were in the back of the automobile, and the trip took from morning until noon. We came back in time to have our dinner in town at the Commercial Hotel."

Counsel for defendants questions the witness regarding the pleadings. Counsel for defendants reads

to the witness the amended answer to paragraph XXII of the amended bill of Clallam Lumber Company wherein the defendants admit the desires and ambitions of the inhabitants thereof, and the witness states that they naturally have the desire and ambition to have Port Angeles the big metropolis of that part of the country. That that is what they have always been boosting for, but not to force the timber men to operate their plants. That it has never been the intention of Port Angeles people to force any industry to operate. That at the times mentioned in the bill the Michael Earles proposition was already under way and they were raising a bonus for Michael Earles and for the railroad company, but they could not hardly stand any more. That if the Lacey Timber people or any other owner came along and said 'We want you to buy us a site, we want to operate the mill,' they would have had to absolutely turn him down for they could not have done it. They were raising a subsidy to encourage Michael Earles to build a mill to operate. Earles bluffed them into it. That at no time was it mentioned on the part of the inhabitants of Port Angeles that the timber owners of Clallam County should build mills at Port Angeles and construct railroads into the interior and transport logs from the interior into Port Angeles. Witness states that there was a just desire on the part of the inhabitants of Port Angeles that the timber owners of Clallam County should build mills at Port Angeles. That the people are just as anxious to build a city in Port Angeles as British Columbia is to build a city in British Columbia. That there was a desire that the timber people should construct railroads and transport logs from the interior of the county to Port Angeles, but not unjustly. That so far as the operating is concerned they expect that Clallam County resources will come to Port Angeles when the time comes."

CROSS EXAMINATION.

On cross examination witness being asked whether he did not state to Mr. Darwin that there were sixty

billion feet of timber in Clallam County, said, that the statement had been made, and it has been advertised by different parties all over the United States that Clallam County contained sixty billion feet of timber, although they have a very small portion of that on their tax rolls. He told Mr. Darwin that they were getting a better record, so they would know where they were at, and what they were at. Witness admits that the chief resource of the county is its timber, but not the overwhelming amount. He states that the assessment on the property of Port Angeles in 1914, amounted to \$2,226,000.00; that being one-seventh of the whole assessment, and the farming country in the east end amounts to another million and a half, besides the railroad. The Mike Earles' Mill he admits, amounts to a large piece of capital. When you compare \$13,000,000 to their little two miles square of Port Angeles, assessed at Two million dollars, he says, there is not a twenty miles square area in the west end that is not worth more than that little area of Port Angeles. The Merrill-Ring people, he says, would not trade their portion of the county for our portion at any time.

“Q. Do you recall what this statement of Mr. Darwin, the present fish commissioner of the State, was: “Hansen favors a policy of taxing the timber holders so high that they will find it unprofitable to longer keep their vast tracts off the market.”

A. Our work does not bear that out. Our assessment roll does not bear that out.

Q. I will ask you whether Mr. Darwin in making that statement in the Times newspaper two days after that interview, as testified, stated the truth, or stated what was false?

A. He wrote that.

Q. That is what he said?

A. I didn't write it.

Q. I ask you if when he stated that in that paper and stated it on the witness stand here, whether he was telling what was true, or whether he was telling what was false?

A. His expression there is false, when he says that I favored taxing timber so high—does he say that “they will have to operate it and cut it”?

Q. I am reading it to you in his exact words, “Hansen favors the policy of taxing the timber holders so high that they will find it unprofitable to long keep their vast tracts off the market.”

A. That is not true.

Q. Isn't the substance of it true?

A. No sir, at no time did we go that far, and at that time I did not know enough about timber. I was a new man on the Board, and I was learning.

Q. Didn't you propose to assess the timber high?

A. No, sir, not high.

Q. At what did you propose to assess it?

A. Equally.

Q. Equally?

A. In 1912—I left it entirely to the assessor.

Q. What rate did you assess it at in 1912?

MR. EWING: I object to that on the ground that the Board of Equalization does not fix the assessment. That is a matter that is fixed by the assessor entirely.

Q. What rate did you understand when you were equalizing the rolls in 1912 that the timber land of these plaintiffs and others were assessed at?

A. I could not tell you, that would be the outside zone, and in 1912 the assessor fixed it at eighty cents, for fir, cedar and spruce, eighty cents, and the inside zone seventy cents for spruce, fir and cedar.

Q. But I am asking you at what proportion of its value did you understand that the assessor was assessing the timber land?

A. I did not ask the assessor. I had my own opinion, and I have always gone according to my own opinion. My opinion is that that was assessed at less than one-third at that time.

Q. That that was less than one-third of the value of the property?

A. Yes, sir.

Q. That the timber lands then that were as-

sessed eighty cents on the dollars were worth two dollars and twenty cents?

A. Two dollars and fifty, it was worth it, and two years ahead of that it was worth fifty cents more yet.

Q. Then your idea was that in 1912, with reference to the equalizing of the roll of 1912, that the timber lands that were assessed at eighty cents a thousand were worth two dollars and fifty cents a thousand?

A. Yes, sir.

Q. In 1912?

A. Yes, sir.

Q. How about 1914?

A. In 1914 it was worth just about the same.

Q. Was it worth any more in 1914?

A. Not on the market.

Q. Not on the market?

A. No, sir; it was worth about the same.

Q. In your judgment, when you equalized the roll for 1914, you considered that the timber lands of the plaintiffs were worth no more on the market than they were in 1912 when you equalized them?

A. Just about the same. They were worth more in 1908, 1907, 1909, and 1910.

Q. If they were not worth more in 1914 when you equalized them, then they were in 1912, why did you assess them more?

MR. FROST: I object to that on the ground that it is an improper question, an inquiry of the Equalization Board as to their reasons and mental process that they employed in fixing and determining the assessed value of any article or property that they had to do with.

MR. EWING: And for the further reason that the Board of Equalization has nothing to do with fixing the assessment. That is a matter entirely in the hands of the assessor.

Q. (Mr. Peters) When you were called upon to pass upon this roll of 1914, did you observe that the timber lands of the plaintiffs here were assessed

at considerably more than they were in 1912?

A. They were ten cents more.

Q. They were assessed at ten cents a thousand more?

MR. FROST: May we stipulate that this objection goes to this whole line of testimony.

MR. PETERS: Yes, sir, the whole line of it. You may elaborate it when the referee writes up his notes in any way you want to.

WITNESS: I don't care what he asks. I am not defending anybody. I did my duty, and that is all I care about. You may ask all the questions you want. I remember the transaction.

Q. Why did you consent to the approval of the roll in 1914 that assessed these timber lands at ten cents a thousand more than in 1912, when they were worth no more in your judgment on the market in 1914, than they were in 1912?

A. 1912 was not assessed high enough.

Q. 1912 was not assessed high enough?

A. No, sir. The assessors did not make a raise as high, as in my opinion it should have been.

Q. Did the Board discuss it?

A. I don't know about that. I discussed it with myself.

Q. The only discussion that was entered into on the 1914 roll was your discussion with yourself?

A. I remember myself what my opinion was. Of course, there was lots said, but what was said, I could not tell you.

MR. FROST: I object to that on the ground that the record of the Board of Equalization is the best evidence of what transpired there.

Q. Were there any arguments produced at that time?

A. No, sir, there was not.

MR. FROST: Are you now asking him questions concerning the actions of the Board of Equalization or concerning his own individual action before the Board of Equalization met? We desire at this time to direct your attention to the fact that the

County Board of Equalization by the laws of the State of Washington are required to meet on the first Monday in August, and that they then and there take an oath of office and constitute themselves a new and independent organization; that they act in a separate capacity from the capacity that they are employed in as ordinary County officers, and that the functions of the Board cease at the expiration of three weeks, and subsequent to that time they are not permitted to do anything.

Is it after the jurisdiction of the Board of Equalization attaches or the assessor? Are you asking the witness what transpired at the meeting of the Board of Equalization, or what he was doing there as a private citizen, or a member of the Board of County Commissioners?

MR. PETERS: You are proceeding on the theory that the King can do no wrong?

MR. EWING: During the time the Board of Equalization sits, it sits as a judicial body, and the reasons actuating its decision as embodied in the record are not to be inquired into.

Q. (Mr. Peters) Mr. Hansen, at what proportion of its true and fair value did you understand that the timber had been assessed at for 1914, by Mr. Hallahan, the assessor?

A. Of course, the assessor, in his opinion assessed it at fifty per cent; but I am not agreeing with him. I may pass upon it and all that, although I may say this cow you have here assessed as twenty dollars, and I maintain that the cow was worth sixty dollars, but at the same time I may have let it pass and that cow should have been assessed at thirty dollars.

Q. At what basis did you understand at the time you were acting upon the Board of Equalization in August, 1914, that the assessor had intended to assess this timber at?

A. I do not understand; I do not know what he did, and I never knew what he had assessed the timber at until the Board of Equalization met; be-

cause John Hallahan is one of the kind of fellows, and I would say, "John, what are you doing," would say I can get my knowledge on the first Monday in August, the same as everybody else did. That is the kind of a fellow John Hallahan is.

Q. Did you understand when you were sitting on the Board of Equalization that you had no power to raise or lower the taxes or the valuations as assessed by the County Assessor?

A. Did I understand I had no power to raise or lower? No, sir, I did not understand that.

Q. Did you understand that you had no power to raise or lower the assessments of the assessor?

A. No, sir.

Q. What did you understand about it, that you could raise it?

A. That we could raise it within a certain length of time. We can lower it during all the time, during the three weeks, but for raising we must send out notices in the first ten days.

Q. Did you raise any valuations on timber in 1914?

A. No.

Q. Did you lower any valuations on timber?

MR. FROST: I object to that as not proper cross examination and because it is a record, and the only proof is the record of the County Board of Equalization. The witness cannot be expected to remember every item or action of the Board of the assessment of a County that embraces thousands upon thousands of descriptions of property, both real and personal.

Q. Now you say that the timber lands in your judgment in 1914 were assessed at one-third of their value?

A. I did not say that. In my judgment it was not assessed at over that.

Q. In your judgment what was the city property of Port Angeles assessed at?

A. I would have to go over that lot by lot.

Q. Why? Did you have to go over this timber tree by tree?

A. I could not; lots are different. Lots you can see here and there.

Q. What was the basis you used by the assessor for the assessment of city property in Port Angeles upon the roll of 1914, that came up to you for equalization?

MR. EWING: I object to that on the ground that the witness does not know anything about it. It is something peculiarly within the knowledge of the assessor himself.

MR. PETERS: While that seems to be true of this matter so far as his duties as a public official are concerned, we desire to accentuate his ignorance.

A. Well, I cannot answer for the assessor, although I do not want to be unfair. I suppose he used the fifty per cent basis, as near as he could, according to his judgment. He may differ from me. Mr. Earle knows that we had great big cards, and we had every lot on that card, and we went over those cards, lot by lot, and we went and inspected the lots, not over the whole townsite, but over the main places where we felt it might have stood a little higher, or a little lower, and we used them on the Board as a whole. I even put my figures on; I took all of the Board of Equalization, and I says, "Let's put the figure here on this one and this one and see how it will come out, and we tried to change the assessment a little bit there down town, and by the time we got through considering it and reconsidering it, the assessor's figures were the best and we let them stand.

Q. How did you try to change them?

A. Add values.

Q. What changes did you try to make?

A. What do you mean?

Q. You said you tried to change them and put them on a list and cover it up?

A. One man comes up and says this: "Somebody else says my property is assessed too high in comparison with this man opposite, and for instance

if he has got one marked down here ten thousand dollars and we will make this one nine thousand dollars, and see how it will work through the block. My figures are still on the card and you can look at them how we did. When we got through we all concluded that the Assessor's figures were just about right, as right as any man at that time could get them.

Q. And you made no changes?

A. Yes, we did make some changes.

Q. You did not consider that the assessors figures were all right?

A. No; but what stands we did not change. We considered we could not better it any.

Q. What you left you left, and what you changed, you changed?

A. Sure, the record shows that.

Q. As near as you could get at it?

A. Yes, sir, the record shows that.

Q. You say, without going over the property values on the assessment roll in detail, you cannot tell at what rate they were intended to be assessed, is that true?

A. No, sir; I could not say that; I do not know what he had in his mind. I, myself, figured as near as I could that they were double that. I might say, I do not think he has got that quite high enough, and I might say that he has got that a trifle too high, and so the average will probably stand, because I am not always right.

Q. You do not know on what basis he figured it?

A. No, sir; let him talk for himself.

Q. Then I understand you, that when you were equalizing the values of city property in 1914 for that roll, you measured those by your judgment of their value on a fifty per cent basis?

A. Yes, sir.

Q. And when you were determining the roll with respect to timber lands of Clallam County for 1914, you measured that with your judgment on a thirty-three and a third per cent basis?

A. That is about what it was worth.

Q. Then you endeavored, as a matter of fact, to assess the timber lands, or you understood in measuring the valuations set by the assessor, in equalizing that roll for 1914, you took it on the basis that timber lands were assessed for one-third of their value?

A. No, sir; I did not take it as a basis.

Q. What did you take?

A. I figured out to myself that the timber lands were assessed at about one-third and let it stand that way.

Q. You figured that the timber lands were assessed at one-third of their value, and when you were figuring the city lands of Port Angeles you figured they were assessed at fifty per cent of their values?

A. Yes, sir; it might be pointed out that my opinion would be that even a town lot was assessed at one-third, and still I would let it stand in some instances.

Q. What right had a county official, do you know, to assess timber lands one-third of their value, or to approve the assessment at one-third of their value and assess the owner of city property at one-half of its value?

A. What right?

Q. Yes, sir.

A. We did not change anything. The assessors opinion may differ from mine, that is all.

Q. Wherever the assessor's opinion differed from you, you let it go at that, and left it as he fixed it?

A. I mentioned it; but the majority rules, and I dropped it. That very same thing came up during the Board of Equalization during 1915, several times, and the figures stand just the same, just because the assessor estimates his a little bit low on one article you do not always raise it. If he is a little high they average up when they all belong to one man."

Witness again details the conversation he had with Mr: Darwin, as follows:

WITNESS: Mr. Fitzhenry was telling him about the great resources of Clallam County, and he was telling him that we had sixty billion feet of timber in

Clallam County. I have never believed it myself. I do not believe it yet. And the logged-off land question came up. I did not tell you this before, that the west end of Clallam County had no outlet at all. At that time, if any one from the east end of Clallam County wanted to go to the west end, he had to go by steamboat to Clallam Bay, and he had to go over a very rough road that took all day, from morning until night, to get to the Forks, and he had to make that same trip back again, and then take a steamboat again, and it took from four to five days to make the round trip to the Forks to do one hour's business, and that is the way the question of poor roads came up in our trip to the lake; and we wanted to take a trip across the Elwas towards Lake Crescent; to the logged-off lands about the resources of that valuable soil and the sixty billion feet of timber, and he says, "Why don't you get good roads?" And I told him we could not; that at the present time we were getting all our County cruised from the beginning to the end, the timber, the logged-off land, wild-cat land, and the east end land.

Q. You were not cruising logged-off land, and wildcat land, were you?

A. It was all cruised, every bit of it was cruised and completed and platted in ten acre lots, and when any one comes in and says, "This ten acres is no good", we have that assessed at ten dollars, we refer him to our books, and our books are absolutely correct, ninety per cent correct. We say, "Do you mean to say this is a pile of rocks, instead of good land?" He has to dispute it. We did not have that at that time.

MR. FROST: Go ahead and tell your story.

A. I forgot.

Q. (Mr. Peters) Mr. Hansen, if you were unable at that time to get good roads, how did you get them?

A. We bonded the county for three hundred thousand dollars and built good roads that fall, and we have got them, and we owe the three hundred thou-

sand dollars for them, I told Mr. Darwin about the logged-off land too.

MR. FROST: Go ahead and tell the rest of your story about Mr. Darwin; he asked for it.

A. I think I have it pretty well told, haven't I? That we were making a complete cruise of the county, and that heretofore the only cruise that we had was made by incompetent men, hired by former County Commissioners; I told him that, and that timber owners had handed in their own cruises, which were very small in comparison with what we were entitled to, and the result of this cruise would be more equalized, the taxation, and we have those results, too; they are absolutely equalized.

Q. Mr. Hansen, you don't mean that these two volumes of timber cruises of lands that have been put in evidence here in this case were incompetent and unsatisfactory?

A. Made by Duvall?

Q. Yes, sir.

A. No, sir, and they are not unsatisfactory.

Q. Those are the ones which you mean were perfected and completed?

A. Yes, sir; and they cost us a good deal of money to get them corrected, and we levied the money and paid the cash for them to do it. It raised the taxes.

Q. Those volumes were all in shape, so far as the timber lands are concerned, for the 1912 assessment, were they not?

A. No, they were not completed.

Q. You heard Mr.—

A. We have our men still working making books for the County.

Q. I say, the books, so far as they refer to the plaintiffs lands here?

A. I would have to refer before I could say they were all ready at that time on record. I would have to refer.

Q. You heard Mr. Hallahan when he was asked that question, and he stated that they were so com-

plete so far as the plaintiffs land was concerned for the 1912 assessment, did you?

A. I do not know; I may have heard it; I do not remember.

Q. He did so state.

A. I don't know.

Q. Do you know anything about it yourself?

A. Whether they were complete or not?

Q. Yes, so far as the plaintiffs lands were concerned?

A. No, sir, I could not tell you.

Q. Without looking at the dates?

A. The proposition is too big for any man to say that this particular thing was finished, or that was finished; it is impossible.

Q. Then you would not say that the plaintiffs lands had been completely cruised by Mr. Duvall and extended on those books for the 1912 assessments?

A. No, I could not tell you that.

Q. What proportion of timber lands had not been cruised by Mr. Duvall, and this new system inaugurated, so far as those lands are concerned, at the time of your conversation with Mr. Darwin?

MR. EWING: The defendants object to that as being incompetent, immaterial and irrelevant, and not proper cross examination.

A. I do not know that anyway, how much was completed.

Q. How much would you judge?

A. That did not come under my jurisdiction.

Q. Then you didn't really know anything about it at the time you were telling this to Mr. Darwin?

A. I did not tell anything about it. I told that we were getting a county cruise. It takes time. It took two years to do that."

The witness told Mr. Darwin at that time that they expected to get a good deal more in taxation not only out of the timber lands, but out of the whole county and that they did get more taxes out of the county. The witness does not know what proportion of the cruise had been completed and had been used

for the purposes of the assessment in 1912. He would have to go to the assessor's office to find that out. The witness told Mr. Darwin that they were cruising the county and that was what they were doing, and that they had completed it and they are absolutely proud of their books.

"MR. PETERS: I think you have occasion to be. I think you are to be greatly congratulated."

Witness says that this trip with Mr. Darwin was taken in the summer time.

"Q. In figuring the valuation of that land in 1912, the timber lands, and making up your judgment on it when it came before you for equalization, that is, in making up your judgment on what is the value of that lands, just how did you figure it? What did you consider the value of the lands and on what basis?"

MR. FROST: We renew our objection.

MR. PETERS: I will consider that the former objections are all repeated here on all the grounds that have been heretofore urged by the defendants.

A. I have forgotten the question.

Q. I wanted to find out this, Mr. Hansen; you said that the lands in your judgment in 1912, at the time of your equalization for 1912, were worth,—that is, the plaintiffs' timber lands were worth two dollars and fifty cents, did you?"

MR. EWING: I object on the ground that the question imports the witness's answer to be that in his judgment the valuation is as he stated, and his judgment cannot be analyzed.

Q. On what did you base your judgment?"

A. By ascertaining, by looking for knowledge wherever I could find it.

Q. What knowledge did you find?"

MR. FROST: It is understood that this objections runs to all these questions.

WITNESS: Sure, sure. That does not make any difference. For instance, in cruising the ground we knew it would cost us all the way from thirty to fifty, or sixty thousand dollars. I was not going to see any Clallam County money wasted. I ascertained

if Mr. Hallahan had hired Mr. Duvall to go at the head of it, and I found out for myself first whether Mr. Duvall was a proper man for that position, and I got a letter from Pierce County, from the Commissioners there. I asked them about Mr. Duvall, and they answered back that he was an A-1 man, and that we could not better ourselves. I wrote to Mr. Frost, and I got a good answer.

Q. What did Mr. Frost say about Mr. Duvall, by the way?

A. A good man.

Q. With a thorough knowledge of the values of timber and of timber interests in every way?

A. And there was a third party, I do not know who he was. It was the tax commissioner. We referred often to the tax commissioner. For instance, we referred to the tax commissioner about large holdings and small holdings, and they gave us a ruling.

Q. Then you did not follow their ruling?

A. No, because we took it under consideration and the minute we started in say, with forty acres, eighty acres, one hundred and twenty acres, one hundred and sixty acres, and two hundred thousand acres, where is the limit where any man can come to an agreement, where to stop; and we took them all equally.

Q. What was your advice from the Board of Tax Commissioners?

A. You have been told that before.

Q. You tell it to me, will you?

A. That the smaller holdings were not worth as much as the large holdings, that was my understanding. That may not be the words.

Q. And they should not be assessed on the same basis?

A. That they should not be assessed as high, that the timber was not worth as much money; you could not sell it. How are you going to draw the difference? Put it in practice and it is a different question. Theory don't altogether work.

Q. What I asked you, Mr. Hansen, was on what

basis did you figure that these lands had the value of two dollars and fifty cents in 1912?

A. Where did I get my information, you mean?

Q. Yes, sir; how did you figure that they were worth two dollars and fifty cents.

MR. FROST: Let the general objection run to this.

A. I even got some information from Mr. Michael Earles. I asked Mr. Carrigan what he thought about it. He is the county Commissioner from King County. He is a man that owns timber. He is a man that is well posted all over, holding the same kind of a position. I asked wherever I could, for instance, on the other day I cut something out of the newspaper. How do I get my information? I get it by piling it up and using my judgment.

Q. This newspaper clipping which you have in your hand was one?

A. Portland, September 9th, this here.

MR. PETERS: I don't think that would be competent.

A. No, but it is a good information for me as a County Commissioner.

Q. You would not say that this publication of 1915 assisted you in 1912?

A. Not a bit, but I am demonstrating to you how I get my knowledge. I haven't got much, but what I get I have to pick it up.

Q. You had complete confidence in Mr. Duvall, and in Mr. Duvall's knowledge, didn't you?

A. Yes, sir.

Q. And Mr. Duvall's knowledge is on those compiled books as a cruiser?

A. As a cruiser I would trust him, because from the experience since that time we have had very little complaint; and for instance, when a fellow comes to me and says, "I am taxed too high", and so forth, I ask him, "How does our cruise compare with yours?" and it is very nearly the same. It is the answer every time, "Very nearly the same as our cruise". Our cruise, I think, is ninety per cent correct.

Q. And you allowed the assessment to stand as it was?

A. Oh, yes; we can only safeguard ourselves so far, and no further.

MR. FROST: Did Mr. Duvall have anything to do with fixing the values?

A. Not a bit, no. I do not think he did. I know he didn't. I have talked to him several times, but if Mr. Duvall had fixed the values he would have fixed them too high.

Q. What was it you said about the logged-off lands and the Michael Earles property in this talk with Mr. Darwin? I did not catch that.

A. I did not say it, but I will tell you that the logged-off lands were assessed too low for the prices that they were asking for them.

Q. What were they assessed at?

A. They were assessed all the way from \$3.00 an acre to \$5.00 \$6.00, and \$7.00, and that was unsatisfactory, and we told the assessor that it was unsatisfactory, and the Board at one time attempted to raise those logged-off lands, and just on account of not having the proper information in the office we could not do it, because it was nothing but dispute. One man would say, "This is fine bottom land; it is worth twenty dollars an acre", and the other fellow would say it is nothing but rocks, so what could we do?

Q. When you told the assessor that they were assessed much too low, what did he say?

A. He said, "They will be cruised the same as everything else, and then there will be a better assessment", and there is at the present time, there is a good assssment of the logged-off lands.

Q. What are they assessed for, do you recollect?

A. All the way from six to twenty dollars an acre.

A. At what proportion of their real value?

A. About fifty per cent. Michael Earle is offering land for forty dollars an acre, and you will find it is assessed for twenty dollars an acre, and some of

it is worth thirty, and less, and some is not worth a cent.

Q. What inquiry did you make, did the Board make, into the assessment of the Michael Earles plant in 1914?

A. The Board did not make any inquiry.

Q. You were here yesterday when Mr. Hallahan was upon the witness stand, Mr. Hallahan, the assessor?

A. Yes, sir.

Q. And you heard his statement as to his assessment of the Puget Sound Mills and Timber Company's plant?

A. Yes, sir.

Q. And the large bulk of machinery and implements were assessed as I recollect it, at seventy-five thousand dollars?

A. I do not know what the figure was.

Q. What investigation did the Board of Equalization make as to that assessment of the Michael Earles plant?

A. It was up, it was considered; but the mill was unfinished, and it was left the way it was. I do not think there was a thing raised or lowered. There might have been.

Q. Was there any effort to raise it?

A. I don't think so.

Q. Was there any effort to lower it?

A. I don't think so; I don't know just exactly what happened. We took our personal tax roll, and we started in with the first page and would go right straight through it to the end.

Q. And you made no investigation yourself, and you do not recall any statements made before the Board of Equalization with reference to the Michael Earles property?

A. There is no question but what we asked Mr. Hallahan some questions, because we do that; and what his reply was I cannot tell you exactly.

Q. With reference to the Olympic Power Company's assessment, what investigation did the Board

of Equalization make with reference to that?

A. We all knew the Olympic Power Company's luck, that they had nothing.

Q. They knew that in 1914, that the Olympic Power Company had nothing?

A. We knew that the money was wasted. We could not go on what it cost them. We knew that the money was absolutely spent by poor engineering.

Q. You heard the testimony that that plant is a going concern?

A. Yes, sir; the plant is a going concern.

Q. You heard the testimony of Mr. Aldwell here with reference to the completion of that plant, and of its holdings, did you not?

A. I was in the court room, but oftentimes I am thinking about something else, and things go on, and I do not always hear them.

Q. Do you recollect what that was assessed for?

A. No, sir, I do not.

Q. How do you know, how do you recollect at this time that you had it under consideration at all?

A. That is natural; that is perfectly natural.

Q. Here is a great big plant, isn't it?

A. Yes, sir.

Q. It is a tremendous plant?

A. It is not a tremendous plant.

Q. You heard the statement read that Mr. Aldwell's Company had furnished to the public service board of the State of Washington, did you not?

A. I saw you considering it, looking at it, but what it said inside I do not know.

Q. You were there at the time the inquiry was made of Mr. Aldwell about that, were you?

A. I was in the room.

Q. You heard him ask about these values that were stated in this report to the public service board, namely that the land was valued at \$1,530,517.34; that the buildings were valued in this statement at \$1,506,742.77; that the transmission lines were values at \$261,535.56; you heard those, did you?

MR. EWING: We object to that as being in-

competent, immaterial and irrelevant, and not proper cross examination. It makes no difference whether the witness heard it or not. Whatever the proof is is in the record.

Q. I asked you that to refresh your recollection.

A. I heard it; but the figures I haven't in my mind.

Q. There is not any such considerable plant as that Olympic Power Company in Clallam County, is there?

A. No, sir, that is the only electric light plant.

Q. It is a tremendous plant?

A. No, it is not.

Q. You don't think it is?

A. No.

Q. Is there anything else in Clallam County to compare with it in size?

A. A man that owns a peanut stand is better off than the man that owns that.

Q. That is the answer that you desire to make as a public official?

A. It is a failure, as far as my opinion is concerned.

Q. When you passed on the assessment of it, did you take those matters into consideration?

A. If a man wastes his money I do not think it is any of our business.

Q. Did you find out at that time how much money he had wasted in the construction of it?

A. I know it has been wasted; how much, I do not know about it. I know that the money was wasted and lost and washed out. It went into the river.

Q. Did you find out at the time you sat upon the Board of Equalization when this item came before the Board for consideration, did you find out how much money they had put into that?

A. I did not find it out then. I had heard it several times before.

Q. How much had you heard?

A. I do not know, but they were large sums, and I had watched the construction of it myself and had

seen them dump sack after sack of cement which was supposed to go down in building up the dam, go like a milky cloud, go down in the river; I have seen that.

Q. Do you recollect how much the plant was assessed for?

A. No, sir; I do not.

Q. Do you recollect what the transmission lines were assessed for?

A. No, sir, I do not recollect.

CROSS EXAMINATION. (Continued)

By Mr. Earle:

Q. Mr. Hansen, we understand you to testify that in the Equalization work of the Board you equalized all property as far as you understood at the same rate?

A. We did not equalize it; we viewed it, and would see if the assessor had done about as near right as he can.

Q. Having in mind—

A. A gross error we would correct.

Q. It was your intent to recognize a uniform rate—

A. Yes, sir.

Q. Wait until I get through. Get in mind what I am asking you and answer that special question.

A. Go ahead.

Q. It is your claim, isn't it, that you had in mind a uniform rate of assessment?

A. Yes, sir.

Q. And it is the claim of the Board, is it not, that your testimony is based upon that position, that the Board equalized property in such a way as to bring it up to the same rate?

A. As near as possible, as near as their judgment would go.

Q. And referring to the instance of the Port Angeles Trust & Savings Bank, of which Mr. Babcock was the vice-president, was he not, at the time he sat on the Board?

MR. EWING: No, the proof does not show that, not at the time he sat on the Board.

MR. EARLE: Well, Mr. Babcock himself swore to that.

MR. EWING: No, after he got off the Board.

WITNESS: I think it was organized afterwards.

Q. Mr. Babcock, the record will show, was vice-president of the Bank at the time it was organized in February of 1914. He was a member of the Board in 1914?

A. In 1914, yes, sir.

Q. Mr. Hansen, do you know the capitalization of the Bank?

A. \$25,000.00, isn't it?

Q. \$25,000.00?

A. I think so.

Q. As a member of the Board of Equalization you knew the amount at which it was assessed, did you not?

A. I have seen the figures.

Q. As a matter of fact, it was assessed at \$2000.00, wasn't it?

A. I do not know. It was assessed at something like that.

Q. You were a member of the Board of Equalization in 1915, were you not?

A. Yes, sir.

Q. And the work of the board in 1915—

MR. FROST: I object to any question concerning the work of the Board of Equalization in 1915. It has no relation whatever to these matters in controversy in this case, and the work of the Board of Equalization in 1915 is a separate and distinct organization from the Board of Equalization in 1914, and 1912.

Q. Mr. Hansen, in the work of the Board of Equalization for 1915, did you recognize the same rate of assessment as in 1914?

A. As in 1914, yes, sir.

Q. Is it not a fact that after plaintiffs' suit had been begun the assessment of the Port Angeles Trust & Savings Bank was multiplied by eight or more?

A. I do not know. It is different; I know that,

but how he did that, or how he multiplied it, I cannot tell you. You ask him about it; he is here; but the figure is different.

MR. FROST: We object to this line of examination, because it is not proper evidence, or any evidence at all; and the action of the Board and assessing officer is the only evidence, and the record itself, the records of the assessment, and the record of the Board of Equalization, as to that particular assessment.

Q. You were chairman of the Board of Equalization in the years 1914, and 1915, both, were you not?

A. Yes, sir.

Q. Was it an attempt of the Board of Equalization to equalize the assessments on the Banks at the same rate?

A. When, this year?

Q. 1914?

A. The banks in 1914, in all the years I have been on the Board, they have never been mentioned amongst us, and I myself have always been of the opinion that money was not assessed, for some reason—I do not know how I got it,—but the banks, for instance, if it stood there for \$3000.00 it remained there. Its capital stock never came up for our consideration. It was not left unassessed purposely. It was because there was no rule for assessing it. I had always supposed, and I think that the other members are of the same opinion, that it was the same way all over the State.

Q. Don't you know as a member of the Board of Equalization and the County Commissioner that the Statute prescribes in a special paragraph just how the Banks shall be assessed?

A. Yes, sir; I never saw that.

Q. Did you ever look for it?

A. No.

Q. You are, and were then, a director of the Citizens National Bank, were you not?

A. Yes, was before, all the time, a long time before I came on the Board of Equalization. I don't want you to make out that I am a big owner of the

Citizens National Bank. My stock in that Bank is just exactly one thousand dollars, and I gave them a note for it when I got it, and it is all paid but four hundred dollars.

Q. I am not inquiring into your financial standing; I am trying to get at another matter.

A. But I don't like to have the impression that I am a big owner in the Citizens National Bank, and that anybody would, or they could, use an influence, or anything of that kind over me; because there is not a man in Clallam County, whether he is associated with me in business or is not, that ever could use an influence over me. I use my own opinion in those matters.

Q. Isn't it a fact that the rate of assessment on all the Banks of Clallam County is wrong?

A. Sure, they are wrong. They were wrong. I will admit that. There is no use trying to get around it. I admit it. And I admit it because we did not know any better. Our attention should have been called to that. You had plenty of chance to call our attention to it. You have been coming down here right along; but you never called our attention to it, never once.

Q. You were a director of the bank, and familiar with its capitalization, and all that sort of thing, and at the same time you were a member of the Board of Equalization?

A. Yes, sir.

Q. It is a fact, is it not, that the assessment of the Banks of Clallam County for all the years for which you have been a member of the Board, was at the rate, or ratio of about 10% of what the Statute prescribes should be the rate of assessment?

A. The books will show you.

MR. FROST: The assessor does not prescribe what shall be the rate of assessment, or the manner. The law of the State of Washington requires that the capital stock of National Banks shall be assessed at the market value, the same as other property.

MR. EARLE: I will repeat the question.

Q. Isn't it a fact that during the years on which you were a member of the Board the Banks were assessed at 10% and less of what would be the market value of the stock of these Banks?

A. They were assessed at exactly what figures there are on the books. If it is \$3000.00, it is \$3000.00. As far as 10 or 20% is concerned, I will keep that out.

Q. Isn't it a fact that there was a uniform rate reserved in assessing those banks?

A. And if one bank with a capitalization of \$25000.00 was assessed at \$3000.00, the other Bank with the same capitalization was assessed at the same amount.

Q. And the Bank at Sequim with a smaller capitalization was assessed at a like ratio, on a smaller capitalization?

A. The assessor did that, I do not know how he did it. He assessed them that way, and they passed the Board of Equalization with them.

Q. Did you recognize any discretion of your own as to that?

A. I was ignorant as to the banks although I am a member of the same in a small degree, only. But as far as money is concerned, I do not think that money was ever assessed any place.

Q. What I want to get at is, what would you do with reference to these assessments when the assessment of the Banks came up to you as a member of the Board of Equalization; did you pass any judgment on them?

A. Yes, sir; I thought the assessment was right.

Q. You thought the assessment was right?

A. That was my opinion of it, and I found out this way after you stirred up the Banks of the County this way, when you went around and subpoenaed the cashiers, then I was told that that assessment was not high enough; but that is the first I ever heard during my five years as County Commissioner that they were not assessed right.

Q. Do you mean to say as director of a Bank

that you never considered the matter of assessment in relation to the Bank?

A. No, sir; neither has any one of the members of the Bank ever mentioned the Bank's assessment to me; and I will take ten oaths on that. Neither have I gone and looked after the Banks account. I have never taken advantage of them, or they of me, in any way. My own competitors have not gone and looked at that bank account to see what they were doing in the way of business, never have used any influence over me, and they would not. They are not that kind of men."

On redirect examination witness says there was no protest filed against the low assessment of banks in 1912, 1913 or 1914; that neither the witness personally, nor the Board of Equalization, had any intention of discriminating in favor of the banks in the equalization of taxes for those years. He says it was an absolutely innocent act of the Board through his inability to properly construe the Act; that Mr. Earle, counsel for the plaintiffs, has been coming down to the county for four or five years, and could have set the Board right if he wished. They have always kept an attorney over us. They take good care of us; don't fear about that. Witness says that he was a school director for nine years, and two terms city treasurer.

On re-cross examination by plaintiffs' counsel, witness says he has been continuously on the Board of Equalization for five years. Witness says K. O. Erickson was chairman of the Board of County Commissioners during the years 1911 and 1912. Witness testifies to a number of specific crimes of which he states K. O. Erickson was guilty.

Defendants offer in evidence as exhibit "38", the Equalization assessment in the town of Port Angeles, taxing District No. 1, for 1912, and 1914. Plaintiffs' counsel thereupon states: "This memorandum of the defendant, being the items of which their exhibit "24" is compiled, is requested by plaintiff, and is filed in the suit in connection with this exhibit "24" by the

defendants, and is named "Exhibit 24-A". The zones are marked on exhibit "24-A" in accordance with the green zone figures on defendants' exhibit "18".

(Witness excused.)

JAMES DICK, a witness called on behalf of the defendants, testified as follows:

DIRECT EXAMINATION.

Has lived in Dungeness thirty-four years; is a farmer; was one of the organizers of the Tax Payers League at Sequim. There was one organization at Sequim, another at Port Angeles. Witness is asked by defendant's counsel what were the objects and purposes of the League. Upon inquiry of Plaintiff's counsel, witness admits that they had Articles of Association, and by-laws in writing, and still have them. Whereupon plaintiff's counsel objected to any parol testimony of the witness as being incompetent, in view of the fact that the matter was committed to writing. Witness thereupon states that the framers found that the taxes were going up very high, that they were going to bond the county for \$300,000.00 to build new roads, which a great many of them didn't favor, and this League was organized to see what was the necessity of all this money, to see that it was expended more judiciously. Witness, together with Joe Keeler, and Donald McInnis, was appointed a committee to go to Port Angeles when the County Commissioners should make their estimate of expenditures for the coming year, to see if they could not hold them down, and they went down for this purpose. At a meeting in 1914, Mr. Dan Earle, plaintiff's counsel in this case, was there, and Mr. Hunt, and Mr. Henry, and a great many timbermen. At their request we met them at the hotel, and it was arranged that Mr. McInnis should do the talking for both the timber men and for the League to the County Commissioners. They went over to them,—It is while they were making their estimates, and making the levy, and they went over with the County Commissioners what would be their expenses for the next year, and tried to shave

them down, and got a kind of compromise out of them, and went back and made a report. We were sent back by the League again in October. Mr. Earle, and Mr. Hunt, and the same timber men were there again. Mr. McInnis made the speech to the Board, and told them that it was just as hard for the rich men to pay their taxes as it was for the farmers, and we wanted economy. We got the levies cut down, the current expense fund shaved to the limit, a little too much I guess, and the road levies in the west end, where the timber owners have property,—two mills in both those road districts; that is, we got their promise that they would do that, and also Road District No. 1. Mr. Hansen, however, would not reduce his levy, that is, District No. 2. That embraces the City of Port Angeles. Mr. Clark agreed to have his levy cut down. His was Districts 3 and 4, the West end, the timber end of the county. Mr. Lotzgesell's, is the Dungeness locality, the east end. He promised that he would cut his also.

Witness Dick is now a County Commissioner, was then school director, was elected commissioner in the fall of 1914; republican in politics; always had a little interest in politics. He never heard of any discussion, or rumor, concerning any conspiracy on the part of the officials, or anybody else, as charged in the plaintiffs' bill; don't think there was any such conspiracy or agreement; thinks he would have heard of it if there had been. Mr. Lotzgesell was witness' unsuccessful opponent for County Commissioner.

Witness is asked the following:

“Q. Have you bought and sold any property in Clallam County since 1912?

A. Yes, sir.

Q. Can you describe the property that you bought and sold?

A. Only as a part of the Abernathy Donation Claim.

Q. Do you know how it is described?

A. The Abernathy Donation Claim is the way it is described.

Q. What was the extent of the property?

A. Well, it is a 320 acre claim, to start with, and I own 101 acres of it, I think, and then 12 acres, that would be 113 acres that I own now; and I bought the remainder of it, and what was left, I think it is 149 acres.

Q. What did you pay for it?

MR. PETERS: We desire to object to this as not a competent inquiry or proper direct examination from the plaintiffs' own witness, and not a basis of value."

Witness says that he bought the Abernathy Donation Claim from Joe Keeler. The original claim he says, was 320 acres; portions were sold off, and 149 acres left, and witness bought that from Mr. Keeler, and took up a contract that a man by the name of Louis Longmeyer had with Mr. Keeler, paid \$6500.00 for it. This was in 1912, or the spring of 1913. The portion occupied by the river is included within this 149 acres.

CROSS EXAMINATION (By Plaintiffs).

Q. Mr. Dick, is it not a fact that the meeting that you attended was the meeting in August of the Board of Equalization, at which time written protests by the timber men were presented, and presented on the day when this hearing was had before the Board; wasn't that the meeting of the Board of Equalization that you attended?

A. We probably were there at the Board of Equalization, too; I think we were.

Q. Where was the meeting held?

A. We were there at the Board of Equalization, but I do not think that we were sent by the tax payers league at that time.

Q. Where was this meeting held, to which you refer?

A. In the court house, you mean?

Q. In what office?

A. In the assessor's office. You were there. That was the Board of Equalization, but we were

not sent there that time by the tax payers league, I don't think.

Q. Wasn't that the meeting to which all of your testimony here refers?

A. Mr. McInnis made substantially that same talk there.

Q. The County Commissioners, when they met as a Board of County Commissioners met in the County Commissioners room up stairs in the old court house?

A. Yes, sir.

Q. Wasn't that the meeting to which all of your testimony here refers; is that the meeting which was held down in Mr. Hallahan's office, and was a meeting of the Board of Equalization at which Mr. McInnis made the proposition that a horizontal cut of ten per cent should be made on the assessment of all property, and that the timber men should be content with that inasmuch as they were concerned only with the amount of taxes which they were paying, and by getting the ten per cent cut that would give them a ten per cent relief, wasn't that Mr. McInnis' proposition.

A. Yes, sir.

Q. And did we not at that time, representing the timber owners say that that proposition was not at all satisfactory to us inasmuch as it did not remove the discrimination against the timber and it was the discrimination against which we were chiefly complaining?

A. I do not remember what the timber men said in regard to that; but I remember the Board of Equalization did not favor a ten per cent cut; but they would do something on the levy.

Q. And Mr McInnis put his proposition at that time in a written statement and submitted it to myself with the idea of getting the timber men to recede from the position of protest which they there took and consent that the ten per cent flat reduction would constitute the entire relief granted to them?

A. I think so.

Q. And this testimony then that you have given with reference to the meeting with the timber men, which took place at the Olympic Hotel, occurred at the time of meeting of the Board of Equalization in the assessor's office, didn't it?

A. I am not dead sure; we were there at all those meetings and met you every time, and conferred with you and talked taxes with you every time we were there. We were to all the meetings; that is the way I remember it.

Q. Was there more than one meeting at the Olympic Hotel?

A. No. I never went to only one meeting at the Hotel. Mr. McInnis probably went to more."

Witness admits that the Abernathy purchase was only a purchase by the witness of the contract which Mr. Longmeyer then held upon the property. Mr. Longmeyer had property in Eastern Washington, and he wanted to get away from this part of the country, and get rid of this contract. Witness paid Longmeyer back what he had already paid on the contract, and just took the contract over. Witness completed the purchase and re-sold the property for \$7500. Witness thinks that he made \$800.00 on the deal, and took the crop off of it. He bought it in the spring, and sold it in the fall of 1913.

(Witness excused.)

J. W. WARREN, called as a witness for the defendants, testified as follows:

DIRECT EXAMINATION.

He is auditor of Clallam County; elected in the fall of 1914; has lived in the County for fifteen years; knows John Hansen, John Hallahan, Frank Lotzgesell, and C. L. Babcock. Has known them ten years; has had more or less interest in politics. Witness has never heard of any such conspiracy, or confederation, discrimination, or agreement, as pled by plaintiffs' bill, or otherwise. Such did not exist to his knowledge; thinks he would have known it if it had.

On cross examination witness admits that he

owns no lands in the western part of the county. The county officials mentioned above are all friends and neighbors of his, Mr. Hansen and Mr. Hallahan having lived there for fifteen years.

(Witness excused.)

E. A. PRICKETT, a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION.

He is assessor of Clallam County; elected in the fall of 1914. His opponent was W. B. Gould, who was a field deputy of Mr. Hallahan. Ray Haines was his opponent in the primaries. Has lived in Clallam County nine years. Witness owns a little bit of timber land in Clallam County which he has owned for about six years. Has never heard of any such conspiracy, agreement or confederation, as charged in plaintiffs' bill, no similar conspiracy of any other kind. Such does not exist to witness's knowledge; if it had, he thinks, he would have known of it.

On cross examination, witness says that he owns two pieces of timber land, one of one hundred and forty acres, the southwest quarter of the northeast quarter of section 22, township 29, range 14 W.; the other, a half interest in three hundred and seventy-seven acres. This is down in that same neighborhood. This land is mostly hemlock and spruce, very little fir; owns no property in Port Angeles; was in the fish business before elected to public office, buying and selling at retail.

Witness says, and for this he is made the plaintiffs' witness, that the manner of assessing personal property by him this year of 1915, is to put down against that property a full one hundred per cent value, and then deduct from it the fifty per cent, upon which the assessment is levied; that is to say, if property were worth a thousand dollars, it would appear in the column as valued at a thousand dollars, but it would be assessed at five hundred. In answer to the question whether he employed the same methods of listing property in 1915 rolls as was employed in the

1914 rolls witness answers, 'It is listed on detailed sheets, the same as it always has been, I suppose.' He says that the records they have were made before the State Board of Tax Commissioners ordered him to take this new way. That they are short one column on there and the tabs are all constructed to take the property at the full value and then supply the percentage that they are assessing the property in the county which is 50%. That the witness is using the old form books which are short one column, and the total of the assessment is put after each name down at the bottom and on account of not having the extra column they have to write on the bottom 'less 50%'. That the new books they will have next year will have another column in there. On redirect examination the witness says he does not know whether that system was in force prior to 1915. That part of it was on the law passed in the 1913 legislature. He does not know how soon that went into effect after the bill was passed. That he heard the list of shingle mills that was read the day before but does not remember the assessment of any of them in 1915. He had no occasion to try to remember them.

(Witness excused.)

GEORGE BENSON, a witness called for the defendants, testified as follows:

DIRECT EXAMINATION.

Lives in Port Angeles; has been engaged in making up reports on a timber cruise of Clallam County; is shown plaintiffs' exhibit "B"; says that that is a print of a map that Mr. Rixon gave witness to place upon it the township and range lines. At the time witness received it, the township and range lines were not on it. The map, he says, is not accurate. The range lines will not check out with the distances as they should. There is a difference of about a mile, or a little over, on this scale. Mr. Rixon knew that, because witness put them on under his direction. He told witness to put upon the map this line which runs from Lake Crescent, between 8 and 9, and the line that

is right east of Sequim Bay, between 2 and 3. He told me to put those lines on as a base, and to distribute this error between that distance. It is an error of a little over a mile.

On cross examination witness says that it is an error of a mile in the distance of approximately forty-eight miles. Witness did not put in the lines showing the elevation. They were already in. All the witness did was to put in the range, the township lines and the shore lines. He got the data for the shore lines from the Government township map, from copies furnished him. The range lines were marked on the Government township map. Witness was asked why he didn't take those from there and answers that he did try to but they would not check out within a little over a mile.

'Q. Did you check it with anybody else besides Mr. Rixon?

A. No sir, I don't think I checked it with Mr. Rixon. Mr. Rixon told me at the time that it was different. He gave me directions. I think if he hadn't given me them I would probably have put in those range lines differently, but I did it under his direction. I had this between two and three for one base, and one between eight and nine, and distributed the difference between those other townships, so the error would not all show in one'."

"Q. (Mr. Earle) Showing you plaintiffs' exhibit "B" is that a map that was prepared by you?

A. Yes, sir.

Q. Are those lines correct?

A. As near as I know; I don't know though.

Q. Do you know of any error in those lines?

A. I would not want to say. That is a pretty small scale. As far as I know there is no error in it.

Q. And that shows all this part of the County in which all the plaintiffs' lands lie?

A. As far as I know it does.

Q. You have seen the map?

A. Yes, sir; I made up their locations too.

Q. You have seen the cruise sheets and know where their lands lie?

A. Yes, sir.

Q. And this is that map in which all the plaintiffs' lands fall, isn't it?

A. I think it is.

Q. Who first called your attention to the error in this map here?

A. Mr. Rixon did.

Q. Are you sure about that?

A. Absolutely; I went down to the Commercial Hotel. He telephoned for me to come down—and you remember, I think, too. The first sight I made was over a mile long, because I chained the wrong line to start on between eight and nine.

Q. To refresh your recollection for a moment, wasn't the first time that error was ever called to your attention on the occasion when I called it to your attention?

A. Yes, sir; that error in the first prints, yes, sir; that is the first time.

Q. I first called that error to your attention and you have since drawn the lines correctly for me, have you not?

A. I will have to explain that a little bit. I do not quite understand. The forest reserve lands comes down on this section line, and at the time Mr. Rixon and I looked at the blue print in Clapp's Hotel, and he told me to put it in as coming down—isn't this the incorrect map?

Q. Yes, sir; that is the incorrect map.

A. This other map I made for you is the correct map.

Q. So far as you know you made it for me and represented it to be correct?

A. I understood that the one I made, I was under the impression that the range line came down here.

Q. Part of the map, this map is a continuous one, isn't it, in two sections?

A. Yes, sir, a continuous one in two sections.

Q. And that part of the map in which the plaintiffs lands all lie is correctly drawn, isn't it?

A. Well, as far as putting on the township and range lines it is.

Q. Explain that?

A. When Mr. Rixon first called my attention to that he told me how to draw this line, and I really accepted Mr. Rixon's error. The forest reserve line runs along between eight and nine, or rather one section east of eight and nine, I think you will find, and I made it out according to Mr. Rixon's direction, and then you called my attention to it and I made a correct map of it. This map is incorrect. (Speaking to Mr. Earle) It is made according to Mr. Rixon, and Mr. Rixon was the one that gave me the wrong steer.

Q. It is due to the fact that right in there is an extra long township?

A. No, I think where Mr. Rixon got confused was on account of the line on the reservation being a little heavier on this print, and we both looked at it, and he took it as the range line, and I simply followed up his error too. I made a mistake, I should have checked up and remedied it."

On re direct examination by defendants' counsel, witness says there was nothing on the plat given to him to indicate the position of the township and range lines. He says that the contour lines did not fall within the proper township and ranges; that the placing of the township and range lines was purely guess work, as far as the contour lines are concerned. Witness would not say that this map would be very reliable. He knows nothing about how the topography was taken. In the maps as originally prepared, witness paid no attention to township, ranges or sections, and the township and range lines are super-imposed upon this map so as to take it off in proper sized squares, and they may happen to fit the topography or not.

On cross examination, witness says that he made the large county map that was testified to by Mr. Remke, witness for the defendants; that in making

this map, witness took the railroad survey, and platted that on first, and took what topography they showed, the correct crossings and gulches and so forth. They did not show, he says, very much each side of the line,—and he connected himself up with the other information which he got from the cruisers' report, and which he had already made out and compared with this map, exhibit "B", and that in very few places the locations would check up with his plat and survey; so far as the elevations and contours go, witness does not know. Witness has not checked this exhibit "B" with respect to contours. Witness made his lines correspond to the memoranda shown on the Government township plat as far as he could, and this map, exhibit "B", is correct, so far as the shore line is concerned only.

Q. Well, if you make your township lines conform to the township plats of the shore lines, it would run consistently through there, would it not, North and South and East and West?

A. They might, and might not, you have to do quite a bit of juggling on a map to that scale anyway.

Q. (Mr. Frost) Mr. Benson, as a matter of fact you received this map as plan map with a lot of contour lines on it, did you not?

A. Yes, sir.

Q. Could you not just as well have superimposed a portion of some County in Idaho, or a part of King County, or a part of Pacific County, on this as a portion of Clallam County?

A. Well, a good many portions I think I could.

Q. Without regard to these contours?

A. Without the contours, you could, yes, sir, so far as the looks are concerned.

Q. There was nothing on this map in section corners or township lines or anything else to identify this as a portion of Clallam County? It may have been King County or Pacific County, or anything else, might it not?

A. As far as the county was concerned.

Q. This was laid on afterwards to show a por-

tion of Clallam County over contours to be found on the map.”

A. Yes.

(Witness excused.)”

H. H. WOODS recalled by defendants, testified as follows:

DIRECT EXAMINATION.

Is county treasurer of Clallam County; elected in 1914; his opponent was Cliff Babcock; at the general election it was Mr. Hallahan. Witness has no knowledge, and has never heard of the existence of any conspiracies or agreements, or contracts for discrimination as plead by plaintiffs or otherwise. None such existed to his knowledge. He is pretty sure he would have heard of it if it had. Witness was clerk in the grocery store of which the proprietor was much mixed up in politics, and usually came to witness and told him everything he heard about politics. Witness thus, usually got the run of pretty nearly everything that was going on. Witness was deputy auditor for twelve months. He conducted a pretty spirited campaign against Mr. Hallahan. If statements, rumors, or allegations of the kind plead by plaintiff had been floating around, witness would have taken advantage of them, but he did not hear any. Witness' campaign was from one of the county to the other on a bicycle, a house to house canvass.

“And thereupon the following testimony was introduced on behalf of the plaintiffs in rebuttal.

MR. PETERS: It is understood by counsel at this time that the depositions taken heretofore in this cause under stipulation of plaintiffs and defendants are published and offered in this cause, awaiting the ruling of the Court upon the objections therein made or that may be thereto made, by the Court hereafter, the depositions offered by plaintiffs being those of J. A. Adams, William W. Garlick, R. W. Shumacher, S. J. Lutz, Benjamin N. Phillips, James P. Christensen, contained in plaintiffs' exhibit “DD”.

It is admitted that the plaintiffs in each of these

four cases have tendered to the treasurer of Clallam County and have kept good by a tender in court of the amount respectively alleged as tendered in their bills of complaint."

E. W. POLLOCK, recalled on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

He is the same witness who has made a report of the appraisal of shingle mills. Witness has made an investigation of the valuation, and a tabulated statement of the properties of the Puget Mills and Timber Company, at Port Angeles; this being based upon the same method of examination, valuation and appraisal, as adopted with reference to shingle mills. It was made on the fifth day of the present month. The appraisal was made of the property as it stood at that time.

Defendants counsel object to the introduction of this evidence of an appraisal made in the month of September, 1915, as not reflecting the condition of the values in March, 1912, 1913 and 1914.

"Q. What did you find from your personal investigation of the physical property?

A. The sawmill building, \$50,000|00; machinery, \$103,362.00; shafting, \$9383.70.

Q. Have you got a copy of that that you can hand to counsel?

A. I gave you a copy the other day.

MR. FROST: Why can't you file it?

MR. PETERS: Does this list of five pages here which will be marked for the purpose of identification as plaintiffs' exhibit "EE" represent the results of your investigation?

A. Yes, sir.

Q. And the value of the physical property of that milling plant?

A. Yes, sir.

Q. How did you reach the valuations which you placed thereon?

A. Mr. Longley and I went through the

plant, listing each machine separately, and each set of rolls, and transfers and each conveyor, and making items of all the principal items or property throughout the plant. We have that in manuscript, the notes that we took at the time. It is priced in greater details than the summary in typewriting.

Q. How did you arrive at the prices or values that you put on these articles?

A. We priced the machinery largely from our records in our office of that kind of machinery, and we made estimates as we went along of the labor and the millwrighting and other features which were built into the plant which would require a personal examination.

Q. What are those records which you have in your office? What do they represent?

A. We have appraised a great many sawmill plants, some larger and some smaller than this, and we have had occasion many times to price the same sort of machinery that we found in that plant. We had recourse to the comparisons in many instances for the purpose of verifying our prices.

Q. Did you make such comparison in this instance?

A. We did, yes, sir.

Q. With other machines in your listings and records and so forth?

A. Yes, sir. Some of the machines we got prices on after coming back, on the 6th, from the people who furnished the machines here in the city, and we got the prices direct from them.

Q. What class of people were those; were they dealers, manufacturers or what?

A. Manufacturers and dealers. The North Coast Dry Kiln Company furnished two dry kilns, and the Archer Blow Pipe people furnished a blow pipe, the Dust Collecting System.

Q. To this plant?

A. Yes, sir.

Q. Did you make inquiry of them as to their price list?

A. Yes, sir. We inquired what the contract price was for the particular work that they did on that plant, and several others that we got. That was to verify our own impressions of what the prices were.

Q. What did you find to be the total value of the real and personal property of Mike Earles Milling Company?

MR. RIDDELL: We object to the witness as not being qualified to express an opinion as to the value of the real estate there.

A. I will say that we did not take the real estate, nor did we take the horses, or the stock of goods in the store, or the furniture and the fixtures in the boarding house. We did not have access to those parts of the plant, and we were unable to price those things, or the stock of beltings, and square parts and stocks of iron we did not take. We took the permanent plant.

Q. At the bottom of page 5 you have totaled the real and personal amount to a certain figure; is the real estate included in that?

A. No, sir; the real estate is not. "Real" there means the improvements, such as buildings, and the parts of the plant that were decided in that Chehalis County case to be real property as distinctive from personal property.

Q. So that in this list, at the bottom of page 5, real property does not refer to that?

A. No, sir; no land.

Q. What did you find to be the total value of the personal property and the improvements, buildings, etc., which you have placed here under the head of "real property", of that milling plant?

A. \$654,689.15.

Q. Was that made up upon the same plan that you investigated and reported upon the mills and manufacturing plants in the Chehalis County case?

A. Very much the same.

MR. PETERS: I think it is understood with respect to this tabulation, Exhibit EE, that the witness testified to each one of these items in the same manner we assumed with respect to the witnesses upon

real estate values and that you reserve your objection to the competency just the same, but not on the ground that we do not require him to state verbally each one of these items.

MR. FROST: No. We agree to that.

Plaintiff's Exhibit EE received in evidence."

On cross examination witness says the valuations given here are the depreciated values, on the same basis as given with respect to the shingle mill. Witness thinks this however, would be the fair cash value within the definition of the tax law.

"Q. Wouldn't you make the same distinction between depreciated value and fair cash market value that you made the other day?

A. This plant was brand-new on the 1st of March 1914, and that was the cash value, in my opinion, and would certainly be at the time, what the owner had just paid for it at that time.

Q. But the appraisal that you made there is an appraisal of what you call the "depreciated value", as that term was used when you made your appraisal of the mills in Chehalis County?

A. Yes sir; this would correspond to the depreciated value.

Q. It is an appraisal of the character that you would make for insurance companies and banks, as testified to the other day?

A. Yes sir; it does not have all the details that we would usually make, but it is made in the same way.

Q. And on the same theory?

A. Yes sir.

Q. (Mr. Frost) When you referred to the 1st day of March, 1914, did you assume to say that this mill the 1st of March 1914 was in the same condition that you found it in the other day?

A. I would assume that from my investigation it was practically the same?

I took the same pains to find out about when it was built, and the machinery people who furnished the bulk of the machinery told me——

MR. RIDDELL: We object to what the witness was told by the machinery people.

Q. (Mr. Frost) What do you know about the condition of the mill on the 1st of March 1914 of your own knowledge?

A. I did not see it at that time, but I saw it about a year before that, and it looked like a pretty good mill at that time; that was three years ago.

Q. As a matter of fact, isn't it a fact that the mill was not going three years before the 1st of March?

A. I saw that plant when I was appraising the Minden Canning Company; I do not remember how long ago that was, but it was in the neighborhood of three years ago, and the frame of the building was pretty well up; it was up, in fact, of the big mill.

Q. Do you know when that mill began its operations from your own knowledge?

A. I was not there, but I have looked into it and inquired, and they told me—

MR. RIDDELL: We object to what the witness was told.

WITNESS: I was not there and I cannot say it of my own knowledge, but it was about the very near the first of March, I think. The machinery would have to all be in place by the 1st of March in order for them to start within a month or two thereafter.

Q. (Mr. Ewing) That is an assumption that you made yourself?

A. Well, it is my assumption based on experience.

Q. But you don't know what the actual facts were?

A. I was not there.

Q. (Mr. Frost) You don't know of your own knowledge whether the mill has been in operation a year and a half or over six months, do you?

A. I don't know exactly how my own knowledge would be interpreted. I am positive in my own mind that it commenced in March or April of 1914, April, or possibly May, the 1st of May, in that neighborhood.

Q. (Mr. Ewing) Was the mill in operation

when you made an examination on the 5th of this month?

A. It was on Sunday that I was there, and I left early Monday morning; yes, it was operated.

Q. The figures that you put in for machinery were the contract prices that were given you by the people who sold the machinery to Mike Earles' mill?

A. That was the case with the North Coast Dry Kiln Company, and the others that I got.

Q. As far as you could find them, you put in the contract prices?

A. Yes sir."

The depreciated value which witness made in the exhibit EE is confined strictly to the value of each piece solely with reference to its relation with the plant of which it is a part. A plant might be removed at such a distance from the material upon which it works that it may have a commercial value of only about \$40,000 and yet it would have exactly the depreciated value that the witness has given here; but the witness states that that was not the case in this instance. The witness made a physical examination of the various items comprising the plant.

"Q. If the shingle mill was put down in the middle of the prairie with no shingle material, no shingle bolts available for use in the mill at all for manufacturing purposes, so that as a commercial possibility it would be worth nothing at all, yet on an appraisal of its various parts and their relations to each other it could be made just the same as you have made this appraisal of the Earles mill, isn't that true?

A. Yes sir."

A tabulation of shingle mill assessments was introduced in evidence by plaintiff as exhibit "FF".
(Witness excused.)

JOHN HENRY ROBINSON, witness on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION.

Is connected with the Northern Pacific railway Company; lives in Seattle. He is a clerk to the Divi-

sion Superintendent. Has been in the railroad business for seventeen years. As such he is acquainted with the tariff upon shipments of logs by the N. P. Railway Company, and the tariff of such during the years of 1912 and 1914.

Witness produces a tariff sheet published March 30th, 1914, which plaintiff has marked as exhibit "GG". This witness says, is the tariff rates published under the Inter-State Commerce Act.

"Q. I will ask you to refresh your recollection by referring to that card, and tell me that rate, what the tariff is?

MR. FROST: I object to that as being incompetent, immaterial and irrelevant.

MR. PETERS: Do you make any objection to the fact that this is a sheet for 1914.

MR. FROST: None at all. We will concede that the rates named therein were the rates substantially for the years 1912, 1913, and 1914, but we object to the class of evidence.

MR. EWING: That is a fact; there has been no substantial change.

WITNESS: No sir, no change.

MR. RIDDELL: We want to further object on the ground that the evidence is hearsay and fixed by an independent party, and not binding upon any of the parties to this suit.

Q. (Mr. Peters) Mr. Robinson, will you refresh your recollection by referring to that distance sheet there and give me the rate charged for the different distances up to say, from forty to fifty miles?

MR. RIDDELL:: Mr. Robinson, have you any knowledge of that rate, independent of the paper?

A. Well, yes, sir; it frequently comes under my personal observation.

Q. And when it does you refer to the paper?

A. Sure.

Q. And outside the paper, you don't know anything about it?

A. In what way?

Q. You do not know what the rate is outside the paper?

A. The point is, that I know what many of the rates are.

Q. Do you know what the rate on logs is independent of the paper?

A. Yes, sir; in some instances, but it is rather a long tabulation to remember; so I would not try to remember all of them; I might become confused.

Q. You get your rates from the paper in the first place, don't you?

A. Sure.

Q. And when you want to go back to it,—when anybody wants a rate quoted, you go to the paper again?

A. Yes, sir.

Q. And the only knowledge which you have obtained of the rates is from the paper?

A. Yes, sir.

MR. RIDDELL: I object to the testimony as the paper is the only evidence in the case and he has no independent recollection except from the paper; but the paper is the best evidence, if there is any evidence.

Q. (Mr. Peters) Mr. Robinson, if you had occasion to give the rates to a personal shipper, where would you get that information?

A. We would go to this tariff sheet and quote him the distance.

Q. Is that a fixed staple rate for all customers?

A. Yes, sir, unless there is a rate specifically named; but if there is not a rate specifically named between two special points, then we refer to the distance table, and that is the rate that shall govern.

Q. (Mr. Frost) Your rate from Darrington to Everett or Snohomish, for instance, would not be a distance rate?

A. I think there is a rate from Darrington.

Q. There is a special rate from Darrington?

A. Yes, sir.

Q. That would be less than the ordinary distance rate, wouldn't it?

A. Yes, sir.

Q. And that would be shown upon this tabulation?

A. Yes, sir.

Q. In other words, you do make special rates under certain circumstances?

A. Yes, sir; the local conditions and circumstances and other things govern.

Q. In other words, this distance tariff is not the controlling factor?

A. It is the basic factor.

Q. But you do make rates that are much less than the distance tariff?

A. Some less, but local conditions govern them very largely, in fact, altogether, you might say.

Q. Isn't it true that you make a lower rate upon your branch line roads than you do on the main line roads?

A. No, I could not say that.

Q. (Mr. Peters) If you will give me then the distance.

A. This is the rate in dollars per thousand feet, ten miles or less, one dollar; over ten miles, and not over 15 miles, \$1.25; over 15 miles and not over 20 miles, \$1.35; over 20 miles and not over 25 miles, \$1.40; over 25 miles and not over 30 miles, \$1.45; over 30 miles and not over 35 miles, \$1.50; over 35 miles and not over 40 miles, \$1.55; over 40 miles and not over 45 miles, \$1.60; over 45 miles and not over 50 miles, \$1.65.

Q. Then, Mr. Robinson, from what is that table made?

A. In what way, Mr. Peters?

Q. Mr. Frost has asked if on the Darington branch, for instance, if there was not a special rate charged; and you did explain that to some extent; will you explain the application of this table to the shipment of logs generally. Does it control, or what feature is it in your tariff regulation?

A. Well, that is the rate at which the logs can be transported.

Q. Has that been made up upon the experience of your railroad in that particular business?

A. Yes, sir.

Q. Have you ever had occasion to examine into the question as to whether the shipment of logs at these rates was a profitable undertaking of itself for your company, or not?

MR. RIDDELL: We object to that as purely hearsay and not binding upon any party to this record. It is incompetent, immaterial and irrelevant.

MR. FROST: And upon the further ground that this witness is not qualified to testify.

A. The question of the handling of logs is coming up constantly, being one of the principal articles which our division handles, and it is a matter of common knowledge to the operating officials, and I may say that I have been present at a large number of these conferences wherein it is known that the handling at these rates was unprofitable to the railway company.

Q. You are referring to the Northern Pacific Company?

A. Yes, sir.

Q. Which is a transcontinental line?

A. Yes, sir.

Q. And the sheets are made up of the general business throughout the field in Washington of the Northern Pacific Company's business?

A. Yes, sir.

Q. And that tabulation would be of the business done upon its branch lines as well as upon the main line?

A. Yes, sir; within the state of Washington.

CROSS EXAMINATION.

BY MR. FROST:

Q. Mr. Robinson, is it not true, that the railway officials consider the handling of logs not desirable and not profitable, because it is a part of the fixed policy of railroads to use all of their power to have the logs manufactured along the line of the road in order that they may get a much higher rate

than is charged for moving manufactured lumber, and the lack of profit in the log hauling is not the lack of profit, but the loss of what they might term, "anticipated profits" that they would make as a profit on those logs were they manufactured into lumber along the line of the railroad and the lumber hauled at a higher rate?

A. You are touching now on the life of the railroad.

Q. Answer the question, is that not true?

A. Partly so.

Q. As a matter of fact, isn't it true, just as I have stated, as I have asked before?

A. Give me the question again.

Q. (Question read.)

A. Well, it is true that the railway company desires, wherever possible to secure for itself a haul on the finished product, but I cannot say that I have ever known them to use their power to force logs to be sent to any point where they would get the finished product haul.

Q. Is it not a matter of fact, however, well known to you and to railroad officials generally, that the railroads do not desire to haul logs?

A. Yes, sir.

Q. That the railroads are endeavoring, and they purposely put a high rate upon logs in order, if possible, to force the cutting of lumber along their lines in order that they may have the higher rates that obtain upon the manufactured product?

A. Oh, I could not say that; because the statistics and the rates do not bear it out."

Witness says that his company is now shipping logs from Darrington to Everett, or Darrington to Fremont, and the rate is \$1.70, per thousand, a distance of 82 miles. Witness admits that they have been carrying logs for the Standard Railway and Timber Company from Hazel to Everett, a distance of 48 miles, but he does not recall what the tariff is; but it is much less than the distance tariff, probably about 50c a thousand less than shown on this schedule. He

thinks the rate is \$1.25. The distance tariff shows \$1.70, or, rather, \$1.65. Witness says this, however, is on a train of logs of ten or more cars. The tariff which witness has testified to, governs single shipments of one carload, or twenty carloads, or forty carloads, but where logs are shipped in trainload lots the tariff may be less.

“Q. The rate can be made less, and usually is made less?

A. Yes, sir; that is fair. If you put twenty empty cars on a siding and shove them in there and you come along the next day and you find the twenty cars all loaded there, all coupled up, and the air coupled up ready to go, it is a certainty that it costs you less than to go to five or six or seven different camps and connect up two or three cars.

Q. Then what you mean to say from this is that this distance tariff that you have testified to here is deviated from in a great many instances, depending upon the number of cars, and upon the contract that the loggers may be able to make with you, is that true?

A. Local conditions govern those.

Q. And then this distance tariff is simply a tariff fixed for the information and guidance of your station agent in localities where there has been no special logging rate?

A. Yes, sir.

Q. And that is the sole purpose of it, isn't it?

A. Yes, sir.

Witness further states that of his own personal knowledge he does not know whether the Northern Pacific is making a profit in hauling logs, or not, but from general information he understands that they are not. Witness has never had the operation of an exclusively logging railroad. He does not know anything about the cost of hauling logs over logging railroads with logging equipments. Witness says it would cost the same to move a ton of silk a mile, as to move a ton of logs, but the rate would probably be ten times as great; so, with a ton of wheat; they

charge as much for hauling wheat as for hauling logs. As to coal, witness does not know, as he has not figured that out.

“Q. (Mr. Peters) As I understand you, Mr. Robinson, this sheet that we desire to introduce in evidence, or this tariff sheet, with respect to freight on saw logs, exhibit “GG” is that which has been regularly published and has become in effect with the interstate commerce and also with the railroad commission laws of the state?”

A. Yes, sir.

MR. PETERS: I offer this exhibit in evidence as exhibit “GG”.

MR. FROST: It is objected to as being, incompetent, immaterial and irrelevant.

Q. And that the sheets for 1912 and 1914 were substantially the same?

A. Yes, sir.

MR. PETERS: I understand that counsel concedes that without bringing the witness up again?

MR. FROST: We will concede that the sheets are substantially the same rate.

(Witness excused.)”

FRANK T. BURROUGHS, a witness on behalf of the plaintiff testified as follows:

DIRECT EXAMINATION.

Witness is with the traffic department of the Milwaukee railroad, is freight agent of this railway, and of several of its subsidiaries in Montana and Washington. Witness is familiar with the tariff for the hauling of logs on the road of the Milwaukee west of Port Angeles, in Clallam County. Witness has the tariff for such with him. Witness produces a tariff sheet as the Washington Public Service Commission No. 3, issued by the Seattle, Port Angeles & Western Railroad. It has been honored by the Public Service Commission. Witness is asked what is the rate on the log haul. That is objected to by defendant as being incompetent, immaterial and irrelevant. Witness says the longest haul is 25.2 miles from Earles to Bay Side

at Port Angeles, and the shortest haul is probably seven miles, from Erickson's Spur. The rate for the longest haul, 25 miles, is \$1.50 on logging flats, equipped with patent boxes, and \$1.45 for unequipped cars.

Plaintiff introduces this tariff sheet as plaintiffs exhibit "HH". It is objected to on the part of the defendants on the ground of incompetency.

The rate for the short haul of seven miles is \$1.15 and a \$1.10 respectively per thousand feet. Witness thinks that the Milwaukee railroad starts at its present western terminus, and is about six miles from Port Crescent.

DAN EARLE, one of the plaintiffs' counsel, testifies for plaintiff as follows:

DIRECT EXAMINATION.

Witness has represented the plaintiffs in Clallam County since 1913, but with reference to the investigations in this matter, since January, 1914. Witness did most of the examination of the tax rolls for plaintiffs referred to in this case. His work was done the last week in the month of January, 1914. Witness being asked as to what knowledge or information the plaintiff had as to the over-valuation of timber, and the under-valuation of other classes of property in Clallam County, answers, over the objection of defendants, as follows:

"A. I will say that nothing definite was known prior to the time on which this investigation work was started. The work was requested, as far as my connection with it was concerned, because of suspicions to this effect had by the plaintiffs. They asked me to make some investigation of it, and that was begun by examining the assessment records and comparing them with the conveyancing records, showing the sales made of real estate beginning about May of 1913, and running through the month of January, 1914. The method of the work in its beginning was this: An examination was made of all of the conveyances appearing of record between those dates made. Most of those conveyances show merely a nominal consid-

eration, but where from the instrument was apparent, or seemed apparent, that the consideration named was the actual one such an instrument would be noted, the description, the parties, the date of the conveyance, the date placed of record. This was tabulated then to form a basis of comparison between those considerations and the assessment of the same properties as they appeared on the assessment roll. There was something over two hundred transfers noted and these were taken from the various parts of the County, practically all over the county. Most of those transfers, however, had taken place within the town of Port Angeles. And the ratio which the assessed valuation of this property bore to the consideration in the instruments shown was then computed and this ratio was reported to the plaintiffs as forming some basis for comparison between the assessed and the real valuations in Sequim and Port Angeles and of the timber lands.

Q. When was this report made to the plaintiffs?

A. It must have been made between the fifth of February and the middle of the month, of 1914. There was some several days elapsed before we could compute those percentages and report on them.

Q. Prior to that time what action had been taken by the plaintiffs to your knowledge—prior to February, 1914, what, if any, action had been taken by the plaintiffs with reference to their supposed over-assessment and discrimination against their timber properties in taxation?

A. Outside of protests made to the Board of Equalization no action had been taken, because, so far as I know, no definite investigation had ever been made, nor had any actual facts been discovered or reported to them.

Q. When were the facts upon which they based these bills discovered by them?

A. Well, the facts, so far as I know, were first reported to them in my report about the middle of February, and following this report I sent to Mr. W. J. Ware of Port Angeles to get an opinion of some

local real estate man on these valuations. I also had some information secured from Mr. Horace White, Mr. John M. Bell, both of them real estate men in Port Angeles and the opinions of these three men as verifying the reports made on the basis of the percentage computed on the results of this search and the assessment and the conveyancing rolls, all of this information was reported to the plaintiffs. Mr. Ware made a preliminary oral report to me on specific properties in Port Angeles, which had been conveyed, and especially this much I had noted from the search I had made. Mr. Ware then, at my request—

MR. RIDDELL: We object to this testimony. The testimony may be competent, undoubtedly is, to show when,—if at all discovery was made, but as to what was done at or about the time the suit was started is absolutely immaterial in this case. The only competent testimony, as we take it, would be that which went to show that the plaintiffs had no knowledge before that time. Any other testimony or testimony tending to show any other facts we want to make our objection to as being incompetent, immaterial and irrelevant and simply a self-serving declaration on the part of the plaintiff.

MR. PETERS: I think counsel is largely correct in that.

Q. Mr. Earle, did the plaintiffs have prior to February, 1914, any information along the lines of that obtained by the report of Mr. Grasty and your own investigation to your own knowledge while you were in charge of affairs to them?

A. None that I know of. They so stated to me.

MR. RIDDELL: I move to strike out that last as not responsive to the question and entirely a self-serving declaration and hearsay and not proper evidence in this case, and we ask that the statement what they told the witness be stricken.

Q. Were you in charge of matters for them at that time out here?

A. In so far as the securing of any data on

which to base a complaint of discrimination in the matter of assessments.

Q. Who was in charge of the protests before the Board of Equalization, or made appearances there?

A. We made protests for——

Q. Whom do you mean by "we"?

A. I made personal protests for the years 1913, 1914 and 1915.

MR. PETERS: It is conceded that there is no assessment of bank stock which has been put in evidence by plaintiffs' here for the year 1912, and 1914 other than the assessments to the banks themselves in the stipulation regarding the record which is put in here.

MR. FROST: We will admit that is the whole assessment of the stock of the banks mentioned and that there was no assessment of the stock of the individual holders.

WITNESS: I wish to add that this map which has been introduced in evidence as showing the valuations prepared by Mr. Ware on Port Angeles property was prepared by him for me in the last week of February, 1914, and was one of the sources of information on which I based my report.

MR. RIDDELL: We ask that that statement be stricken out and it is not responsive to any question and being objectionable under the same objection that was made before, that a statement of what evidence or what knowledge that the plaintiffs had in this case at or about the time they began suit has nothing to do with the question of their laches in the case. The question is a simple one as to how early they got knowledge and not what they may have done at that time.

Q. (Mr. Peters) The map which you refer to is identified as plaintiffs' exhibit "C"?

A. Yes, sir."

On cross examination witness says: He began his employment for the plaintiff in the year 1913, in July. His personal knowledge, however, goes further

back than that. About two years prior he had been employed by plaintiffs to examine the proceedings of the Board of Equalization.

Witness admits he has heard the testimony of numerous witnesses as to the existence of a boom in real estate in Port Angeles. Witness does not know anything about the boom. He was in Olympia at the time.

“Q. You did not discover that real estate in the city of Port Angeles was greatly under-assessed until this boom had taken place?”

A. I did not know about the boom. I was in Olympia at the time that boom was taking place.

Q. The witnesses have testified that the boom began in the fall of 1912, and terminated along in the winter of 1913, which was subsequent to the boom that you discovered that real estate in Port Angeles was very much under-assessed in your opinion?

A. Yes, sir; so far as that date of the boom can be fixed.

Q. In making your investigations you compared the prices of—I believe you say that you began in May, 1913?

A. Yes, sir.

Q. And concluded your investigations in February, 1914?

A. Yes, sir.

Q. And that the fact that real estate was made in 1913?

A. Yes, sir.

Q. And in making your comparison, then, you, of necessity, compared the prices that then obtained for the real property with the assessment of 1912, did you not?

A. It was the last—it was the current assessment.

Q. You are familiar with the fact that real estate is only assessed biennially?

A. Yes, sir.

Q. And that the last assessment of real estate was made in 1912?

A. Yes, sir.

Q. And in making this comparison you are comparing 1913 and 1914 valuations with assessed value of 1912?

A. Yes, sir, I think so.

Q. And that is in other words, you were comparing the inflated values that followed the boom with an assessment that took place prior to any boom?

A. I would not say that.

Q. That is a fact, is it not, if there was a boom?

A. If the prices were inflated that might be the fact, so far as Port Angeles alone was concerned; but you must remember the investigations went to the sale of lands all over the County, back in Sequim, and timber lands and everything else, and was intended to be an investigation of the relation of real to the assessed valuations all over the County, and covering all branches of real estate.

Q. But it is a fact relating to the real property in the City of Port Angeles, is it not?

A. Yes, if you refer to the fact actually——

Q. That your comparison of actual values, or market values, as you term them was made of values subsequent to the boom, if there was a boom, and compared with an assessment that was made prior to the boom, if there was such a boom, just as to the city of Port Angeles?

A. I would have to qualify that by explaining that sometimes these conveyances were made some time prior to the date of recording. I took the conveyances appearing as having been recorded between May of 1913——

Q. That is subsequent to the boom, is it not?

A. That date, when the boom subsided has been so variously stated that I would not attempt to compare any dates.

Q. It would not be beyond the winter, or February of 1913?

A. I can only say, Mr. Frost, that the transfers compared with the assessments were the transfers recorded between May 13th, and the end of January,

1914, and they were compared with the then current assessment.

Q. Which was the assessment of 1912, as a matter of fact?

A. Except insofar as it had been raised in 1913.

RE-DIRECT EXAMINATION.

BY MR. PETERS:

Q. Mr. Earle, I will ask you whether or not in your investigation at that time, February of 1914, you made an investigation as to what was the market value of Port Angeles real property in 1912?

A. No, I don't think I did.

Q. In talking with Mr. Ware and Mr. White, as you have stated, who gave you the valuations of real estate, did you inquire from them and learn anything from them at that time as to the valuations in 1912, or 1913?

A. The only statement that I recall was that of Mr. Ware, who stated that the real market value of Port Angeles property had not changed in his opinion during the last two years.

(Witness excused.)

MR. PETERS: With the consent of counsel at this time the plaintiffs offer in evidence the contour map of the Eastern half, the contour map of Clallam County outside of the forest reserve to correct the error in the ranges as testified to by Mr. Benson, the error being an error of one mile in the ranges as testified to by Mr. Benson. It is understood that the range lines were superimposed upon this map by Mr. Benson in the same manner in which he testified that he had superimposed them on the other map save that they are correctly spaced in this map.

(Map referred to marked plaintiffs' exhibit "I-I" and received in evidence.)

Plaintiffs introduced in evidence and read in evidence the depositions taken and hereinbefore filed, of R. W. Schumacher and J. P. Christensen, and the defendants introduced in evidence and read the deposition of J. A. Adams, and the following portion of

the testimony of William W. Garlick: Page 47 lines 6 to 22 inclusive; page 50 line 25 to line 2 on page 51; page 52 lines 3 to 18 inclusive; page 57 line 21 to line 30 inclusive; all the cross examination of the witness Garlick, re-direct examination and re-cross examination. Testimony of Charles F. Seal page 66 lines 6 to 13 both inclusive, and all of the cross examination of the witness.

Causes 36-37-56-57.

DEPOSITIONS OF WITNESSES

J. A. ADAMS, produced as a witness on behalf of the plaintiffs, having been first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION BY MR. EDWARDS:

MR. RIDDELL: It is understood, as I understand it, that these depositions may be introduced by either side. That was not formerly incorporated in the stipulation, but that is the understanding now.

MR. EDWARDS: Yes, sir; you could do it any way.

Q. (Mr. Edwards.) Mr. Adams, you live at Sequim?

A. Yes, sir.

Q. How long have you lived there?

A. This August it will be seven years since I came here.

Q. How have you been engaged since that time?

A. That would be hard to say; I guess, the first two years I was engaged in fixing up my home, and since then I have been loafing around, and looking after the building of roads here, for two years, part of the time.

Q. This community has grown considerably since you came, has it not?

A. Yes, sir.

Q. And developed its agricultural resources and otherwise commercially?

A. Yes, sir.

Q. You have owned considerable property here yourself?

A. Well, I do not know; I do not think it would be called considerable. I have owned three or four hundred acres of land at one time.

Q. You have sold it?

A. I sold out most all of it.

Q. Have you sold for others?

A. Well, in a way I have; I have went around—

Q. I do not mean on commission, but you have helped people to sell?

A. Yes, sir; for instance, I would meet you, and you would tell me that you wanted to buy a home, and I would give you prices and tell you where I thought was the best place, and would be instrumental in getting a place sold in that way.

Q. You have been familiar with sales in this country and throughout the country round about?

A. Yes, sir, I know pretty much all the sales that have been made in this country.

Q. Including Dungeness?

A. Yes, sir, with most of the sales made down there.

Q. You now have a real estate office?

A. Yes, sir; but I have done no business there since I have had it.

Q. You sell other people's property, or have your own for sale?

A. Yes, sir.

Q. What sales have been made in the community within the last year?

A. In the last year I do not know whether there has been any.

Q. Within the last two years, we will say?

A. There has been very few in the last few years, almost nothing doing here. My brother bought two pieces of property here two years ago, and I sold several pieces about two years ago.

Q. Do you remember any special piece? Is one of the pieces that your brother bought the one on the road towards Port Williams?

A. Yes, sir; that is 40 acres.

Q. That is the southwest of the southwest quarter of section 8, township 30, range 3?

A. I do not know. It is right on the State aid road through the cut over there; I know that, just a mile and a half from town, and right north on this State aid road, right here.

Q. There is a township map, I think probably you can locate it on that.

A. I am a poor hand in locating lands. This is the center of the section, and Greening is right there, and this is—there is section 20.

Q. How far from this corner is your brother's land?

A. A mile and a half.

Q. Then it is the southwest of the southwest quarter of section 8, range 3 West?

A. Yes, sir; that is right.

Q. What was the amount of this sale?

A. \$1500.00.

Q. What is the land worth today?

A. He is asking \$3000.00 for it. He has been asking that for it ever since he bought it, but he has not sold it.

Q. It is worth that, isn't it?

A. I think so; I think it is the best bargain around here, as far as that is concerned.

Q. (Mr. Riddell.) This was bought by your brother two years ago?

A. Yes, sir, it was bought by my brother two years ago, T. H. Adams.

Q. (Mr. Edwards.) That land was cheap at that, don't you think?

MR. RIDDELL: I object to that as leading.

Q. (Mr. Edwards.) Do you think of any other special case where there was a sale?

A. Right west of that, across, I sold 20 acres on five years time at thirty dollars an acre.

MR. RIDDELL: I move to strike out the answer on the ground that the sale was not for cash, but was on time.

MR. EDWARDS: No objection to that. Do you want it stricken?

MR. RIDDELL: I guess not.

Q. (Mr. Edwards.) Can you point that out on the map?

A. It was in this 40 acres here, right across the road.

Q. It is the southeast of the southeast of section 7, in the same township and range?

A. Yes, sir.

Q. To whom was that sold?

A. To a fellow by the name of Burton.

Q. How much, 20 acres?

A. 20 acres, yes, sir. That was at \$30.00, five years time, 6% interest.

Q. That was all uncleared land, was it?

A. Yes, all but about one acre.

Q. How much of it is on the hill, rocky?

A. None of it is rocky.

Q. Some is on the hill right opposite your brother's land?

A. The first ten, which joins my brother's place, to Fitz Henry. I sold last year ten acres right in the same forty acres to a fellow for \$40.00 an acre. That is bottom land, four acres cleared on that, five years time, 6% interest.

Q. And that was uncleared?

A. All but four acres; four acres were cleared on it.

Q. The rest of it was the original woods?

A. In the bottom; that was all bottom land, cleared of stone.

Q. Do you recall any other sales?

A. Ten acres which my brother owns, which adjoins the corporation.

Q. Can you locate that on the map?

A. Right here. (Pointing.)

Q. It would be in the northeast of the southwest, of 19, the same township and range.

A. Yes, sir.

Q. There your brother bought ten acres?

A. Yes, sir. A two room house and a chicken house. It was a chicken ranch.

Q. His initials are T. H.?

A. Yes, sir.

Q. From whom did he buy?

A. George somebody, I forget the name.

Q. What did he pay for that?

A. \$900.00.

Q. Does he still own that?

A. Yes, sir.

Q. Do you recall any others?

A. No, I do not know of any others now. There has been very little land changed hands here in the last two years.

Q. How about over the Dungeness way?

A. I do not know of any piece there that has changed hands in the last two years, unless it would be that Toby land. I forget what he paid for it. That is the only place I know of. It might have been four years ago; I don't remember. Mr. Dick there sold it.

Q. You don't know what the price was?

A. No, sir, I do not. I did at the time, but I have forgotten. I heard at the time.

Q. You don't think of any other sales around in that community of Dungeness?

A. No, I do not.

Q. Do you know the value of that Toby land?

A. No, I do not know the value?

Q. Have you any opinion as to the value of it?

A. No, sir, I have not. I knew the place sold for less than the improvements are worth. You could not cut the timber off of it and cut it up for less than it sold for.

Q. Do you know the Henry McAlmund place?

A. Yes, sir.

Q. Have you any idea what the improved land on that place is worth?

A. No, sir, I have not. Those people down there, most of them, haven't got any values on their places. They do not want to sell.

Q. The land is worth something?

A. Sure. I know one thing, that there are very few places in this country, if you count paying the cost of your buildings, and the clearing of the land, that you can make five per cent on the money invested in this vicinity. There are very few places in this country that you can do it.

Q. Have you any opinion as to the value of any piece of land over there at Dungeness?

A. I think the most of those places would take about \$200.00 to buy them. That would not buy them, as far as that is concerned.

Q. They are not willing to sell at that?

MR. RIDDELL: Let him finish his answer.

A. They have got it as a home like my home down here. I would not take anything like what it ought to be sold for. It is not worth it. It is not worth what it cost me to put it up.

Q. You have forty acres where your home is, haven't you?

A. Yes, sir.

Q. Do you remember the description of that?

A. No, I do not. It is in section 18, though.

Q. Can you look at the map and tell?

A. Yes, sir. It is in the northeast of the southwest of section 18, township 30, range 3.

Q. That is all improved?

A. Yes, sir.

Q. And under irrigation?

A. No. There are about ten acres in the woods; the heavy timber is all lying, the stumps on it.

Q. And thirty acres improved and under cultivation?

A. Yes, sir.

Q. You do not farm it yourself, do you?

A. No, sir. I rent it.

Q. That is irrigated, too?

A. Yes, sir.

Q. It is productive?

A. Yes, sir.

Q. And you have it rented?

A. Yes, sir.

Q. What is the annual rental that you get?

A. Six hundred dollars.

Q. That is for the thirty acres?

A. No; there are ten acres in the woods and stumps.

Q. Thirty acres under cultivation?

A. Yes, sir, thirty acres, under cultivation, and ten acres stumps and timber.

Q. The other land adjoining yours is the same quality?

A. Yes, sir.

Q. Improved land?

A. Yes, sir.

Q. And just as productive?

A. Yes, sir.

Q. And all irrigated?

A. Sure, yes.

Q. The same would be true of section 18?

A. Sure.

Q. All of 18?

A. All of 18.

Q. And how much of 17?

A. Which is that, going north?

Q. Going north?

A. That is nothing like as good land as 18.

Q. Some of it is?

A. Very little of it.

Q. Some is, and is as productive as that in 18?

A. Yes.

Q. And in 17, east from 18, that is level land, isn't it, under irrigation?

A. Not all of it, no, there is a lot of it—yes, sir, most of it, of 17.

Q. That is a mile north of town?

A. Here is the town. (Showing.) That is most all level.

Q. Practically all of 17 is level and is under cultivation and it is as productive land as your home forty, isn't it?

A. Yes, sir.

Q. How about this land in 20 and 21, east of town?

A. Most of that is all good.

Q. Most of it is under cultivation?

A. Yes, sir.

Q. That that is cleared and under cultivation is as good land, and is as productive as yours?

A. That that is level and can be watered, all this land that can be watered is as productive.

Q. As your home place?

A. Yes, sir; I do not see any difference in it.

Q. You know Mr. Noble's place down there, east and north of town?

A. Yes, sir.

Q. Can you call the description—

A. No.

Q. Well, the clearing on the Noble land is level and like all the rest of it that you have mentioned?

A. Sure, yes, sir.

Q. You do not recall how many acres of his is under cultivation?

A. No, sir, I do not. If I would say it, it would be a guess.

Q. Your home place is highly improved; that is you have a good dwelling on it, and other farm houses?

A. Yes, sir, good buildings on it.

Q. In order to get at the land itself, without the improvements, what do you suppose the improvements are worth?

A. I do not know. They are worth but darned little if you try to sell the improvements; worth a good deal more than if I would have to do it again. If I would do it over I would put up different improvements.

Q. What did they cost you?

A. I do not know. I shut my eyes and went after it. The red barn cost me fifteen hundred dollars, but the others I do not know, because I shut my eyes and checked it out and went after it until I got it fixed like I wanted it. I did not have any more idea what that place cost me than a man that never saw it.

Q. You have some idea what the improvements would be worth to a man that wanted to use them?

A. It would cost a man several thousand dollars to put them up there.

Q. How many thousands?

A. I do not know; but I know one thing; I know I put a good deal of money in there that I would not put in if I had to do it over again.

Q. They cost as much as ten thousand, the buildings?

A. No, sir, I do not think they cost that much?

Q. Seven?

A. I do not know what they did cost.

Q. They cost over five?

A. I guess you can't put them on there for five. The way I did it was, I brought my lumber and everything from Bellingham and that costs. I brought my carpenters and mechanics and everything over.

Q. It can be built a good deal cheaper now, can't it?

A. Sure, it can be built a good deal cheaper now.

Q. What could those improvements be put on there now for?

A. I guess I could put them on there for five thousand dollars. I could do it a great deal cheaper than I did when I put them there. I brought everything over on a scow and had it hauled up from Port Williams at very high prices, labor and everything was very high priced at that time.

Q. What do you consider your home forty acres worth?

A. I have got no price on it.

Q. I know you haven't.

A. It is like that you would buy an engine and boiler, and stick it back in the woods, and you are broke and busted, what are you going to do with your boiler? You sell it for scrap iron, just like if I wanted to sell that place, I could not get half my money out of it.

Q. Your home is just outside of the town limits?

A. I know that.

Q. And this is a thrifty community and a pleasant place to live, suppose you were willing to sell but did not have to sell, and someone willing to buy, but did not have to buy your place, wanted to buy it, what would be a fair price for it?

A. As I told you there is no price on it. I never studied about the price. A man that can go around here buying for cash, he can buy this land for one hundred and fifty, to two hundred dollars an acre; but take a man who is looking for a place and do not care for the buildings, fancy buildings, that I put there, he would not value them any more than he would a common house.

Q. The kind of land you can buy for two hundred dollars an acre depends on—what you can buy for two hundred dollars an acre depends upon several things; it is the location and character of the land, whether it is level, and whether it is susceptible of being irrigated?

A. Yes, sir.

Q. Take a piece like yours, the thirty acres that is all improved; land like that you cannot buy for two hundred an acre here, can you?

A. Well, if the man has the cash he can do it, without much improvements on it, he can buy for two hundred dollars an acre. I have got bigger prices on some of my land, but I am not selling it.

Q. Take the land without the improvements?

A. As I told you the other day, there are no sales going on, but they have got the prices up, and you cannot get them down, and what are you going to do?

A. Is there any land as good as your thirty acres, or about like that in this community that can be bought for two hundred dollars an acre?

A. Yes, sir; I can buy you land just as good as mine, there ain't a bush on it, cleared up, for two hundred dollars an acre.

Q. Can you cite me some?

A. Yes, sir, I told you the other day that there

was ten right down the road here, and one has got improvements.

Q. How about that other forty of yours that is in pasture?

A. Which forty is that?

Q. That you showed me that the calves were on?

A. I have got a big price on it, but I am not selling it.

Q. What was that price?

A. Two hundred and fifty dollars an acre.

Q. Could you locate it on the map?

A. Right across from my home forty. There is the house building over there, and a house over here, Fitzgeralds.

Q. That is the southwest of the northeast of 18, township 30, range 3?

A. Yes, sir.

Q. And you would not sell that for two hundred an acre?

A. Well, it depends. It is going to depend on what the future is going to bring. If I would see that I can't do any more than we have done, I would sell it for two hundred dollars an acre, but it is only a speculation with me, holding that land. I do not need the money. I have got no use for that money, and if I find somebody to loan it to, I would not make a bad debt and lose it, and I know that they can't get it from me in the shape of land.

Q. That is just as good as any other forty on the prairie?

A. Yes, sir, there is no better on the prairie.

Q. How about Guerin's?

A. He has got a good forty.

Q. That is Edgar Guerin, isn't it?

A. Yes.

Q. He is east of town?

A. Northeast.

Q. That is in section 17?

A. Yes.

Q. He has considerable land under cultivation there, and what do you consider that worth?

A. I do not know; he bought it five years ago for thirty-five dollars an acre.

Q. That was unimproved?

A. He had about forty acres in cultivation then on the place. He bought that forty five years ago for forty dollars an acre. That is all clear.

Q. Do you know how many acres he has?

A. No, sir, I do not.

Q. About two hundred acres?

A. I don't think so. He bought forty acres from the Brown people, and he bought the old original tract, I forget how come me to know what he gave for it,—it was offered at thirty-five dollars an acre, and I tried to get my neighbor, Mr. Prim, to buy it.

Q. He did not buy it, the whole piece at that?

A. He bought the original tract for thirty-five dollars an acre, and he bought forty acres from the Browns for forty dollars.

Q. His cultivated land is just as productive as your home place, is it not?

A. Just as productive as anybody's.

Q. For use by one who wants to use it, it can be made to yield just the same?

A. Oh, sure.

Q. Take the level land on your brother's forty, over there, if water were put on that it would be just as productive?

A. Yes, sir.

Q. Water is easily put on it, isn't it?

A. Sure.

Q. How about the Ray Hamilton ten acres?

A. That is just as good as anybody's.

Q. Except for the distance of the village it is just as valuable as your land?

A. It is not as far as I am from the village. He is right here in this forty here.

Q. That is the west half of the east half of the northwest of the southwest of 17, township 30, range 3?

A. Yes, sir. He bought that, I think, two years ago, for \$150.00 an acre.

Q. It is worth more now, isn't it?

A. I don't know. It is not selling.

Q. Is he offering it for sale?

A. He told me he would sell it for two hundred if he could get two hundred, but there is no land moving now. There is no land selling.

Q. You have twenty acres in the southwest of the southwest of 17, township 30, range 3, haven't you?

A. I did own that.

Q. Don't you now have the north half?

A. No, sir, that half is across the road where my brother's is, that is 18; I have got nothing in 18.

Q. Whose piece is this? Here is the town limit?

A. Yes, yes, sir, that is a fact; that is mine too. That is 20 acres down there.

Q. That is the north half of the southwest of the southwest of section 17, township 30, range 3?

A. Yes, sir; I own that.

Q. And that has some improvements on it?

A. Yes, sir.

Q. And how much are the improvements worth?

A. I don't know. I guess they would cost perhaps fifteen hundred or two thousand dollars to put them on there, the orchard and barn.

Q. Fifteen hundred to two thousand?

A. Say fifteen hundred.

Q. Is the land level?

A. Well, no, there is a little bluff around. After you get on the bluff it is level.

Q. It is all arable land?

A. That little piece in the bottom is sub-irrigated. It will have to be ditched off.

Q. Except for that, it is good land?

A. It is good land, all of it.

Q. Which was the Grant place that I was looking at the other day?

A. That is in section 18, fifteen acres.

Q. It is in the southeast of the southeast then?

A. Yes, sir.

Q. Is that J. M. Grant?

A. Yes, sir.

Q. That is highly cultivated piece, the Grant, land, isn't it?

A. Yes, sir, not any more than any of the rest of it on the prairie.

Q. What is that worth?

A. I do not know. He is asking five thousand for it, but he is not getting it. He has been asking that for two or three years.

Q. Will he sell it for less?

A. I do not know; he has not yet.

Q. How about the Joseph Kerner land; he is down here in 20, isn't he?

A. Yes, sir.

Q. And he has thirty acres?

A. Yes, sir.

Q. Is that all under cultivation?

A. Yes, sir, all of it.

Q. And is as productive land as your home place?

A. Yes, sir.

Q. His is the west half of the east half of the southeast of the northwest, and the west half of the southeast of the northwest of section 20, township 30, range 3, 30 acres?

A. Yes, sir.

Q. Is he farming that himself?

A. Yes, sir, I think he is.

Q. Do you know what revenue he gets from it?

A. I do not.

Q. Is it for sale?

A. Yes, sir, he would sell it. He would be glad to sell it. He is in debt so deep, he wants to get out.

Q. What is it worth?

A. I do not know. It is hard to tell what it is worth. There is nothing selling.

Q. It will produce as much per acre as your land?

A. Sure, yes, sir.

Q. Do you know Chris Miller's place?

A. Yes, sir.

Q. What is the cleared land there worth per acre?

A. It is worth just as much as any of it on the prairie.

Q. Can you locate that on the map?

A. It is not on this township. (Taking another map.) It is a half a mile from my corner. This road comes down here; here is Chris Miller's here, in that forty.

Q. In the southeast of the northeast.

A. Yes, sir, of 17. This road turns to Angeles, right on that line.

Q. You said his improvement is as good as any on the prairie?

A. Yes, sir.

Q. What has he improved?

A. About ten acres.

Q. What is his selling price; he wants to sell, doesn't he?

A. Yes, sir, he wants to sell. I know I sold some adjoining on the west, just as good as he has got for \$25.00 an acre, five years time and 6% interest.

Q. When was that?

A. I think about three years ago, or two and a half; two and a half years ago.

Q. All in the woods?

A. Yes, sir, my forty is in the woods?

Q. Without water?

A. Yes, I can put water on it, I have got the water to put on there, on everything I have if I want to put it on.

Q. That don't go in with the \$25.00 an acre?

A. No, sir. I sold forty acres, three years ago, or two and a half; I got pay for twenty acres of it. The other twenty I will have to take back, I think. I will put it on the market for \$20.00. It has got timber on it.

Q. That adjoins Miller on the North?

A. No, on the west; it is in the bottom, good sandy land down there.

Q. That would be the southwest of the northeast of section 13, township 30, range 4?

A. Yes, sir.

Q. Jeritts place, that is in section 18, township 30, range 3, isn't it?

A. Yes, sir.

Q. And it is the west half of the southwest of the southeast of the southwest, five acres, isn't it?

A. Yes, sir; five acres, section 18.

Q. Section 18, township 30, range 3?

A. Yes, sir

Q. Have you any opinion as to the value of that land without the improvements?

A. Like any of the rest of it around here, just the same land exactly. There is not a bit of difference in any of this land that is being irrigated around here.

Q. When did he buy that?

A. He bought that three years ago last fall.

Q. I was thinking there had been a transfer since then?

A. Three years ago last fall. I know he bought it a few days before I left for Honolulu.

Q. Where is that land of the McClay estate?

A. That is west of the Dungeness river.

Q. About directly west of Sequim?

A. Yes, sir.

Q. That is being marketed now, isn't it?

A. Yes, sir.

Q. What kind of land is it?

A. Well, some of it is good land; some of it is sorry land. Some of it is high mountain; I would not give 50c an acre for it. I would not have it; only got improvements, just to hold the holdings together, that is it; I will say furthermore, if a man goes over there and pays forty dollars an acre for that land he is a fool when he does it.

Q. They have been selling a good deal of land?

A. I question it. A man paying five per cent down and calling it a sale, but gentlemen, that is not a sale.

Q. That is in the flat?

A. Yes, sir, what they call cut-over land.

Q. It is logged off, and not otherwise?

A. Yes, sir.

Q. It is susceptible of being irrigated?

- A. Yes, sir, that is, part of it.
- Q. I mean, that that is in the flat?
- A. Yes, sir, they can irrigate that.
- Q. They have been making sales within the last two or three months, haven't they?
- A. Yes, some of them are contracting to take it, that will never pay any more.
- Q. What price have they been getting?
- A. It is only hearsay from me. I do not know.
- Q. You know what is reputed in the community as the price?
- A. Yes, sir.
- Q. What are they getting?
- A. I think it is ranging from fifteen to forty dollars an acre.
- Q. Haven't they sold some as high as fifty?
- A. Not that I heard of, no. Not that I heard of.
- Q. Do you know about what amount of land they have sold?
- A. No, sir, I do not.
- Q. There is considerable clearing going on, isn't there?
- A. Slashing, not clearing. There is a good deal of difference between slashing and clearing.
- Q. Isn't there some clearing going on?
- A. No, I do not know of any. I do not know of a bit of clearing. It did not hear any dynamite. It takes dynamite to clear land in this country.
- Q. Do you know the Angeles road there?
- A. Yes.
- Q. That is not cleared land?
- A. There is a fellow clearing up a place to put the house out on the Earle's land.
- Q. There near Dick's land, isn't there some?
- A. That is not in the McClay land.
- Q. That is north of the McCay land?
- A. That is Lintripp.
- Q. Yes, he has cleared some?
- A. Yes, sir.
- Q. Could you locate that on the map?
- A. No, sir, I could not. I do not know the

sections over there, of any of it over there the other side of the river.

Q. Do you know how much Lintripp has?

A. No, I do not.

Q. It is near the Bill Dick's place south, isn't it?

A. Yes, sir, it joints McLaughlin, on the south.

I would not be certain whether it is McLaughlin's, or Dick's. They are right there together, though.

Q. What is the value of that Lintripp?

A. That stump land?

Q. Yes, sir.

A. Now, my value of stump land is very small. I say that this stump land, the best land is, not worth over ten dollars an acre, and a man is a crazy jink to give it. You take that McClay land that is cut over where it is good, and you can't clear it and put it in first class shape for less than two hundred dollars an acre.

Q. You know Bill Dick's farm, you are familiar with that?

A. Yes, sir.

Q. That is a highly cultivated place?

A. That is a good place.

Q. And very productive, isn't it?

A. Yes, it is a fine place.

Q. He is an energetic successful farmer?

A. Sure he is, as much so as any man we have in the country.

Q. Do you know what he is making his land produce?

A. No, sir, I do not.

Q. Have you any idea as to the value of it per acre, I mean of the cultivated land?

A. I know he could not sell it for less than two hundred dollars, because it cost him that to get it out of the woods, cleared up.

Q. He would not sell it for two hundred, would he?

A. I do not know whether he would or not.

Q. Do you think it is worth that?

A. Well, if a man wants it for a home in this

climate, it is all right, but there are places that I can put that two hundred an acre in other places and make four times as much money. If he is hunting for an investment, not land.

Q. Not land?

A. Yes, sir; I can carry you where you can buy land for thirty-five dollars an acre which will make a good deal more money to the acre than it will up here, I mean for rents.

Q. Not here?

A. No, not here. I do not mean here. But I am speaking, if a man has got a bunch of money and wants to invest in land for revenue he would be foolish to put it in here.

Q. Suppose he wants to use it like Bill Dick does?

A. If he wants to live here and puts his money down where he can sit down and look after it, all right. But his revenue would not be anything like it would if he would go into San Francis, Arkansas, or the White River, or the Red River, where he can get it for \$25.00 an acre there, and make \$12.00 or \$15.00 an acre rent.

Q. How does Bill Dick's land compare in productivity with this land on the Sequim prairie?

A. Well, I do not know. I think Bill can make as good crop as we can when he has rain, or if he would put water on it, I think he could.

Q. If he gets as good crops off of that land as you do down here on the prairie, the land ought to be worth as much per acre, oughten it?

A. Yes, but this land on the prairie is not worth over two hundred dollars an acre. They are asking more for it. I suppose Dick could ask more than that for his.

Q. But you do not think it is worth it?

A. No, sir, the prices they have got on it, it is not worth that much money.

Q. People coming here ought to come here on account of this climate?

A. I never did figure on making interest on my money, or on my investment.

Q. Going back to Dungeness, how about the McGinnes land, what kind of land is his?

A. He has fine land.

Q. Is it as productive as this at Sequim?

A. I think so; if I was going to; if I was going to farm it I would rather have it. I would not have these devilish rocks to contend with.

Q. It is worth as much per acre as this at Sequim?

A. For a farming proposition it is; I would rather have it.

Q. Do you know the Thornton place?

A. I do not know it.

Q. South of old town? West of old town?

A. Who owns it?

Q. Mrs. Thornton, of Port Townsend?

A. That is where you go through that sandy lane?

Q. Yes, sir; how does that land compare in value with the Sequim land?

A. I do not think it is anything like as good as the Dungeness or the Sequim land.

Q. Because it is higher and drier, and sandier?

A. Higher and drier and sandier, that is my idea about it.

Q. How do you think it would compare in value, half as valuable?

A. I do not know. I never have noticed a crop on the place. I paid no attention to it. I only went through there four or five different times; but that part of the country does not appeal to me at all; not that I am knocking anybody's corner in this country. If I say anything that is not good, they say I am knocking the neighborhood. I would rather not say anything about it.

Q. I am talking about the productivity of the land, in that respect, would you say that it is half as valuable as this at Sequim, or at Dungeness?

A. I do not think it is, sir.

Q. It would not have half the value?

A. No, I would not give one acre here at

Sequim, if they would give me two there. Other people might be glad to do it; I do not know.

Q. Do you know the Lotzgesell place?

A. Yes, sir.

Q. How is the land in there?

A. The level land is good, first class land.

Q. Is it as good as this land at Sequim?

A. I would rather have it to farm on it, because it is more pleasure in plowing.

Q. You think, if anything, it is more valuable than at Sequim?

A. For a farming proposition I would rather own it.

Q. Would that apply to George Lotzgesell?

A. Yes, sir, they have good land.

Q. And Frank Lotzgesell, too?

A. Yes, and Horns, and all that in that bottom over there, Dicksons, and all that in that bottom over there. That is a might fine valley right in there.

Q. Have you any opinion as to what it is worth per acre?

A. It is worth two hundred dollars, or over, because it would cost them that to clear it in that bottom.

Q. How much more than that?

A. From what I saw of the stumps that is not cleared there I think it would cost about \$250.00 an acre to clear it?

Q. They are still clearing up land around, though?

A. Yes, sir. They are getting in a little.

Q. (Mr. Earle) In your opinion is it worth two hundred and fifty dollars an acre?

A. It would cost that to get it up, what I judge from that ten acres across the road from my house, that was much easier to clear than that bottom, and it cost me one hundred and fifty dollars an acre to put it in the shape I have got it in.

Q. (Mr. Edwards.) If the land when they get it cleared isn't worth what it cost them to clear it they would not be apt to go on clearing, would they?

A. I don't know; some of them clear land in

this country where I would not give them ten dollars an acre, where it costs to clear it one hundred dollars an acre.

Q. It is pretty good land?

A. Yes, sir, if you want it for a home it is all right. If he wants it for an investment, it is all wrong. If I had a million dollars and wanted to invest it, if I wanted it in land I would not put a bit of it in this stump land. I would not touch it. I would go where land is a good deal cheaper, and my revenue would be much bigger. It is all right for a man to come here with a family and wanting to clear a home up and get a good home to live on, and use the land himself and do the work himself; but there is no money in a man buying this land to rent it out.

Q. As a speculation?

A. As a speculation; that is, for an income. If I wanted to put my money in a large body of land and rent it out for an income to live on, I would never put it here.

Q. Those men, Mr. McInnes, Mr. Lotzgesell, Frank and George, they are making good money on their land, aren't they?

A. Sure, they are making good money, but they have got their sleeves rolled up and into it. Whenever they attempt to rent it and pay their taxes and repairs they won't make no interest much on their money, that is a fact.

Q. Will they make as much interest as you get on your home place?

A. I hope they will make more, because my place don't make 5%, by the time I pay my water rent and taxes, it don't make 4%.

Q. Don't you think they are making more per acre every year than you get for rent for yours?

A. They are running their places themselves. I do not know what they are making. I suppose if I should take my place and go in and work, and work it myself and do more and look after things, I would make a good deal more money. I would consider my time worth that.

Q. Don't you know, Don McInnes is not doing work there?

A. He is one of the hardest working men in this country. You can go down there now, and he is in gum boots and overalls and working harder than any man he has got on his place. I never was there in my life, and I have been there a good many times, but that Donald is always working. I have never been there when Donald is home but what he is working there. At haying time he works like a Turk, and when he would come over from Seattle he would do the work.

Thereupon the hearing was adjourned until 1:30 o'clock in the afternoon.

1:30 o'clock, hearing resumed.

Q. Mr. Adams, you have been aware, of course, that the plaintiffs in these suits are owners of timber in the west half of the county?

A. Sure, yes, sir.

Q. There was a tax payers committee, wasn't there?

A. A tax payers league.

Q. A tax payers league in this county?

A. Yes, sir.

Q. Was it just in the east end here?

A. From Port Angeles east, and the west end was never organized because there was nobody down there much and it was troublesome to get in there; they had no roads.

Q. What persons did that organization include?

A. Everybody that wanted to join it, merchants.

Q. You were active in that?

A. Yes, sir, I was.

Q. The work of the league was done principally through a committee of some kind?

A. No, sir, I do not know as it was. We generally have meetings and talk over things. We never had but two or three meetings.

Q. You were quite active in the work?

A. Sure, yes, sir. I was president of it.

Q. Who were the others, who were most active?

A. Well, a good many took an interest in it.

Most all the people around here would take more or less interest.

Q. There were just a few weren't there, that were especially influential and active?

A. Oh, no, most all of them.

Q. Could you name any of them?

A. Of whom, of the people?

Q. Of the most influential and the active?

A. Mr. Dick was one, Donald McInnes, and William Mates.

Q. What was the main purpose of that league?

A. It was to see that the taxes were regulated like it ought to be in the county, and tax the people as it ought to.

Q. What do you mean by that? Had the taxes not been very well equalized?

A. There was not enough taxes. There was not enough income in the County when that thing was gotten up. The taxes in the east end did not amount to anything hardly. The taxes on my home when the thing was started was only twenty-eight dollars and today it is over one hundred.

Q. Wasn't one of the main purposes of that league to put up the assessed valuations on timber land in the west end of the County?

A. Timber, farm lands, and anything; not any more for the timber land, than it was for the east end. The timber lands valuations did not amount to anything. They were not paying any taxes. That timber down there was assessed as low as 15c a thousand.

Q. Was it through the efforts of this league that the valuations were put up?

A. Now, I could not say as it was, because this man was assessor, and when we first organized and got after him he was pretty bull-headed. He did not have much to do with it.

Q. You refer to Mr. Hallahan?

A. Yes, sir, I refer to Mr. Hallahan. He did not seem to take in with us very much.

Q. You did make an effort to get the valuations on timber put up?

A. Of course, all the lands, all of it.

Q. And the valuations on timber were put up?

A. Sure they were. We felt like the timber man was not paying his part of the taxes.

Q. Were the valuations on Port Angeles property increased through your efforts?

A. I don't know whether it was through our efforts, or not, but it has all been increased.

Q. Do you think the assessment rolls will show that?

A. Yes, sir, I think it will. I think it will show it increased all over the county.

Q. Didn't your league succeed in having the valuations of the farm lands put up?

A. I do not know whether it was the league or what it was; everything went up; farm land, timber land and everything else. The revenue of the County when I came in there was not sufficient to keep up these crooked roads, and the holes filled up.

Q. What was this Sequim land assessed at per acre in this community, irrigated land, such as that at your home, what was that assessed at per acre before your league became active?

A. The valuation?

Q. Yes, sir.

A. I don't know. All I know was that my first payment of taxes, I paid my taxes, and it was some twenty-eight dollars and few cents.

Q. That was six years ago?

A. Yes, sir.

Q. Before your property was improved?

A. I had it improved, but we were a year behind in paying the taxes.

Q. That assessment had been made while your place was unimproved?

A. Yes, I think it was. The price it is assessed at did not come up until about the time Mr. Hallahan came into office, until about the time the tax payers league was formed?

Q. That was after this community began to be productive, wasn't it?

A. Yes, I guess so, after they began to work the farms to make something.

Q. You don't know whether it was the activity of your league that increased the assessed valuations at Sequim or not?

A. No, sir, I do not know that we had taxing powers in the league. As I stated we felt like the people were not paying much taxes, and especially the timber men were not paying much taxes.

Q. Efforts were directed against the timber men, weren't they?

A. No, sir, I do not suppose they were. I never felt that way about it.

Q. By what means did the league succeed in having the valuations increased?

A. I do not know. As I told you Mr. Hallahan is the man that put the valuations on it. He did not do it through the league's efforts, or none of the league's committees waited on him, or anything of that kind; but we all talked about the assessments down there on that timber. The timber being assessed, the highest valuations then was about 40c on the timber, and some of it as low as 15c.

Q. Members of the league did urge on the taxing officers an increase?

A. Sure we did urge an tax increase, because we felt like the timber could stand it. The timber was taxed much smaller than anything and the price of timber was a good deal more than that. I had a friend of mine from Arkansas up here and I told him—

MR. RIDDELL: That is objected to.

MR. EDWARDS: Don't put in any matter that is not responsive to the question.

Q. (Mr. Earle.) Let me ask you whether the tax payers association or league, and especially whether you men in the eastern end of the county ever made any definite effort or special request to have the assessment value of your east and farm lands raised?

A. I do not know.

Q. Don't you know that so far as your efforts are concerned, or the efforts of those other men in

the east end, that they were directed, not to the raising of agricultural lands, but the raising of timber lands?

A. No, sir, I do not know anything about that. I have never kicked on my assessment at all.

Q. Do you remember of any effort ever being made by your tax payers associations to raise the assessed valuation of your Sequim land here?

A. No.

Q. (Mr. Edwards.) Or the Dungeness lands?

A. No.

CROSS EXAMINATION

BY MR. RIDDELL:

Q. When was your tax payers league organized, if you remember?

A. I do not remember.

Q. How long was it in existence?

A. They were in existence a year, I guess after we called a meeting; we haven't called a meeting in a good long time, but I do not know—two or three years, wasn't it, John? (Addressing Mr. Hallahan.)

Q. Tell what you did, what did the tax payers league do?

A. We would have a meeting and join the league and we would talk about raising revenue to make more roads, and betterments in the County and such as that, and put more taxes on the timber in the west end of the County. It was paying no taxes, a lot of it, and this county would tax them and they would come up to the Auditor's office and say: "Here we are not going to pay this, we will pay so many dollars; if you don't take that, you will get a lawsuit," and they would accept anything they had and we did not want any more of that.

Q. Did your committee at any time, or did the league at any time send a committee to see Mr. Hallahan to ask that any part of the taxes be raised?

A. If we did, I do not remember it.

Q. As a matter of fact you did not?

A. I do not remember if we did; I do not remember.

Q. Was there any attempt made on the part

of this tax payers league, or the citizen's league to have anybody's taxes increased above what they ought to be?

A. No, sir.

Q. Was there any desire or any intention on the part of anybody that you know of to put a larger burden of taxation on anybody, or on any class of property in the County than they ought to bear?

A. No, sir.

Q. If there had been any such intention you would have known about it?

A. Sure I would.

Q. Did you ever have any intention or any desire that an unjust share of the burdens of taxation should be placed on any person or on any property in the county?

A. No, sir, I did not.

MR. EDWARDS: I object to that and move to strike out the answer because the intention or the desire would not be material.

Q. Did you or anybody else so far as you know of, in the taxpayers league, enter into any agreement or any combination or conspiracy or ever talk over the assessment with a view to having anybody's assessment made burdensome, more than it ought to be?

A. No, sir.

Q. Was there any desire on the part of anybody that you knew, or know of now, either connected with the taxpayers league, or out of it in this County to cause the timber owners in the west end of the County to pay a larger proportion of the taxes than they ought to pay?

A. No, sir.

Q. So far as you are aware have the timber owners in this County ever been required, or ever been assessed in a higher proportion than they ought to be?

A. No, I do not think they are, in proportion I do not think they are assessed as high as the cleared land here in the west.

Q. You do not?

A. No.

Q. Have you ever had any experience as a timber man?

A. Yes, sir; I have had eighteen years.

Q. You have lived in this vicinity how long?

A. Seven years this August.

Q. You have lived in Sequim in this County seven years this August?

A. Yes, sir. Q. You came here for the purpose of investing some money, whatever money you had?

A. No, sir, I came here to make a home first, and fish and hunt, and lend the balance of my money out, and so after I came here I thought the thing over, and thought I had better put some of it in land and loan a little out, so if I made a flot on what I had loaned out I had something I could sell and get something out of.

Q. Are you in politics in the County?

A. I am sorry to say that I was a little last year. I hope to never be again.

Q. I take it that the people in this County did not appreciate the efforts you had taken in the Citizen League to job the timber owners, and consequently they did not elect you?

A. I do not know what was the matter; but I know I served the County two years in helping to get these roads together.

Q. You have helped on things of that kind?

A. I sold bonds and looked after the roads; I do not think that is appreciated. I know I saved the County \$15400.00 on the first contract that was let out.

Q. When you bought and improved your place, Mr. Adams, did you do so with the idea of making it an investment?

A. For revenue?

Q. Yes, sir.

A. No, sir.

Q. If you had been trying to improve the place for investment purposes, would you have spent your money in your home place in the way that you have?

A. No.

Q. As I understand, Mr. Adams, you bought that place, and you improved it for a home irrespective of what the value might be at that time?

A. Irrespective of what the value or the cost might be.

Q. You did not need a revenue from the place?

A. No; I hope I never will need it.

Q. You had other means of revenue?

A. Yes.

Q. When you had a whim in the improving of that place you gratified that whim, no matter whether it would be productive or not?

A. Yes, sir, sure.

Q. As a matter of fact the amount of money that you have put in the place does not bear any relation to the actual cash value of it?

A. No, sir; it is like my two automobiles. I have got two automobiles that cost me two thousand dollars, which I would be glad if some man would give five hundred for them, right now, cash.

Q. Did you, or any committee of the tax payers league ever go before the board of the County Commissioners, and acting in conjunction with Mr. Earle, here, the attorney for the timber men in the west end, in conjunction, both of you acting together?

A. I think Mr. Earle was there at the time.

Q. Who was the committee?

A. As well as I remember it was Jim Dick, Don McInnes and myself.

Q. You were a committee from the tax payers league?

A. I do not remember whether I was or not. I know we were there.

Q. State what was done?

A. Well, we were there before the board of County Commissioners to get them to reduce, not the value, but the levy, to make it less on the taxes, to make the taxes less in the County. That is what we were there for, to get these taxes reduced, and the Olympic Leader comes out and says that Don

McInnes kicked so hard that they had to lower the taxes in the east end, but the tax payers in other districts, and Port Angeles and other places would not allow them to lower it in that part, that they wanted John Hanson to carry out his ideas. I can show you that in the Olympic Leader. I have got it in my house yet.

Q. Did you go down there for the purpose of having the levy lowered in the east end and not of the timber men, or all the same?

A. No, sir; all over the County.

Q. When was that?

MR. EARLE: It was in August.

WITNESS: Whenever it was.

MR. RIDDELL: Before the County Board of Equalization in August?

A. Yes, sir, I guess that is the way it was.

Q. You were speaking about the valuations of property here as being affected by cost of clearing; is it not a fact that the land is being cleared, and has been cleared on contract in the Sequim prairie for \$100.00 an acre?

A. I do not know of any.

Q. Might you not be mistaken about that?

A. Mine cost me more than that.

Q. You don't know of any being cleared here for \$100.00 an acre?

A. No.

Q. If you should turn out to be mistaken on the cost of clearing would that affect your valuation of property, property values?

A. Mine?

Q. Yes, sir.

A. No, I do not know as it would; but you can't get this land cleared at that.

Q. I want to know, assuming if you can, if it were possible that you might be mistaken about it?

A. Well, if I am mistaken—

Q. Would that affect your testimony as to the value of land?

A. I would not think so.

Q. You have put the value as to what you think is the value?

A. I have put the value on the land what it is worth before it is cleared and after it is cleared.

Q. Is the value you put on the land after it is cleared with reference to the cost of clearing?

A. Yes, sir, the clearing and the land too.

Q. If the cost of clearing the land was less then would you put a less value on the land?

A. No; I would put a higher price on the raw land for this fact, if this heavy stump land is ten dollars an acre and costs \$200.00 an acre to clear, then the next forty next to it would cost one hundred and fifty dollars an acre, that that has not got so much stumps on ought to be worth more than the other; that is the way I should figure it.

Q. You don't know of any land being cleared in here for \$100.00 an acre?

A. No, sir, I do not.

Q. You spoke, Mr. Adams, about the land in here being desirable for homes; would you say that when a man buys a piece of property in here he buys the climate too as a part of the value of it?

A. I figure one-third for school, one-third for climate, and the other third for the land. I made that remark out there since I had been here. If I was going to buy a good big sized farm I would not give fifty dollars an acre around here, full of rocks. You get to plowing it awhile and see what you have. I would rather plow ten acres in this down here than to plow this at all.

As I understand it the land on the prairie is irrigated here?

A. Yes, sir.

Q. It costs something to irrigate the land?

A. Sure it does. We pay an assessment every year for water, for keeping up the ditches. We paid 3% is the last we have been taxed.

Q. And it run from that to what?

A. From that to ten per cent.

Q. From three to ten per cent?

A. Yes; and I would not be certain—I think the Eureka ditch, the highest of that was twenty per cent.

Q. Twenty per cent on the value of the stock?

A. Twenty per cent on the dollar; if you had one hundred shares your assessment would be one hundred dollars.

Q. A dollar a share?

A. Yes, sir.

Q. If you buy a share?

A. If you buy land, a half, or two-thirds of them won't give you the water. The water don't go with the land unless you make a deal with the party you buy it from, and if you don't say anything about the water you buy the land.

Q. Could you tell us about what it costs per acre to keep up the water charges?

A. No, sir, could not do it, because this year the highest assessment in Sequim ditch is three per cent, and in the Independent ditch it is five per cent, and next year the Independent might be five per cent, and the Sequim ditch ten per cent; so you don't know where you are at. It is a good deal of trouble to put the water on the land. You have to stay out there with it.

Q. It requires some additional labor to attend to the irrigation, to irrigate it?

A. I should say so. It costs two dollars and a half a day to get anything like a good man to do it.

Q. How much water stock do you have to have per acre to farm?

A. A man on forty acres ought not to have any less than six hundred shares.

Q. Unless you have two or three hundred shares it will be taking of others to irrigate it?

A. Then he won't get a good job then.

Q. Do you know whether or not there was an organization of the tax payers league in Port Angeles? Was there an actual organization of it there?

A. I don't remember whether there was or not; but we went down for it, and I think we called for

members there in the theatre that night; I don't remember.

Q. Isn't it a fact that some of the residents of Port Angeles joined it, but there was never an organization in Port Angeles?

A. No, sir. This was the head organization up here at Sequim, and down here at Henry Chambers, those people joined it in there at Dungeness, but Sequim was the head office of all of it.

Q. How many members did you have at the time it had its largest membership; do you know?

A. I don't remember. I don't know as I ever heard.

Q. What methods did you try to use?

A. Well, I don't know of particularly any.

Q. Well, in effecting the proper taxation of property in the county, what did you do?

A. The only thing is we would put the public sentiment on it so that they would have to raise it. They would have to get more taxes; that is the way I looked at it. You get the public sentiment on a thing and it will carry it quicker than anything. The question was looked up here and found that the timber men, that they were paying no taxes. People had nothing to do; they could not get anything to do. I was in a case of that kind myself, and we had to spring the taxes on the land and get it up and the whole south got busy. Whenever you get these timber men down here busy you will have this County for a County, they will do something; but as long as you have this County locked up they will keep it locked up.

RE-DIRECT EXAMINATION

BY MR. EDWARDS:

Q. What do you mean, by "locked up"?

A. Hold their timber without cutting it. They will hold that timber for the next forty years, if they don't pay taxes on it.

Q. Returning to the water rights; when you put the value on land that does not include what one would pay for water rights?

A. Sure it does, with me; without the water the land is worth nothing. Without the water, absolutely, this prairie is not worth a dollar an acre. If you move the Dungeness River away from here so you could not get a drop of water to use on this prairie it would not be worth a dollar an acre.

Q. If I buy a piece of land here and don't also bargain for the water, I don't get the water?

A. If you don't call for water you can't get it.

Q. There are some who get along with ten shares per acre, aren't there?

A. Well, that is some people—well, yes, sir, some will do it.

Q. Get along fairly well that way?

A. No; they swop around and steal it together. There is a lot of that stealing of water.

Q. When you spoke of the three per cent assessment you meant three per cent on the value of the shares?

A. Yes, sir, to the dollar. In the Sequim ditch and the Independent ditch it is a dollar a share; you can't buy it cheaper. And in the Eureka ditch it is a dollar and a half.

MR. EDWARDS: There is a little more direct examination I would like to ask.

Q. (Mr. Edwards.) Do you know the Chambers place, the Willis Chambers place?

A. Yes, sir.

Q. The other side of Severs place, isn't it?

A. Yes, sir; I know where it is?

Q. How does that land compare with the value of the land we have mentioned about Dungeness and Sequim?

A. I do not think it is as good land. We have a whole lot of stuff there that is no account.

Q. I mean his arable land, that he has under cultivation; under the plow; is it worth less or more?

A. Well, if I was going to buy it I would not give as much for it.

Q. How much less?

A. I don't know. I have never been in his

fields to look at it. I only passed through there. I judge from the crops there growing, from the road,— he has a pot of peat land over there that is no account at all. It won't grow grass; it won't grow anything.
(Witness excused.)

William W. Garlick produced and sworn as a witness of plaintiff testified:

Q. (Mr. Edwards.) Do you know the value of lands in this community?

MR. RIDDELL: I make the same objection.

A. Do I know the value of land in this community?

Q. Yes, sir.

A. That is a pretty hard question to answer, because people put a different estimation on lands. But according to my views I know a little something of it. I do not know as I could give you an accurate value of lands. I do not think I could, because the land is of such variety, that a person would have to be pretty well posted to give the value of it.

Q. Well, if a particular piece of land was called to your attention that you are acquainted with would you know approximately the value of it?

A. Approximately, I might give my idea of the value of it, see; but I don't know whether it would be authority.

Q. (Mr. Edwards.) Take the land nearer to town, that is thoroughly cleared and is under irrigation, what would you say would be the value of it, good tillable land on the prairie and nearer into town?

A. This land on the flat originally called the Sequim prairie it varies in character also. It is a hard matter to decide. Take down on the lower part here it is more valuable than it is higher up, because it is not so stony down that way, and it is more productive anyway.

Q. Down in 16 and 21 some of it is not quite so good as that in 17 and 18?

A. I would not take it to be quite so good, some

of it. It is very spotty; some places it is poor. The most of that in there is more uniform. The north is pretty good land.

Q. How about this land in section—in the west half of section 19, west of town?

A. It is not quite so good. It is more stony than the other, and it is not such dark land. The darker the land is here generally the better it is. This red land is not as productive, I do not think.

Q. Just west of town, isn't that pretty black land?

A. It is stony, some of it.

Q. Some of it that is as near town is black?

A. Some of it is not as good. The majority of it is about as good as the other.

Q. Nelson's is better land than Heller's?

A. I think it is a little, yes. It is a hard matter to give an estimation of the value land where there is such a variety of land as there is in this country.

MR. DICK: There is hardly two acres alike.

A. Yes, sir, there ain't hardly two acres alike. My opinion about the difference in land would be different from someone else's. You can't make a thorough estimation of land in the community at all and be right anyway.

MR. RIDDELL: It is all the truth?

CROSS EXAMINATION

BY MR. RIDDELL:

Q. You have been living at Sequim for 24 years?

A. Not at Sequim, but in the vicinity.

Q. You said that about a year and a half of that time you have been away?

A. Yes, sir.

Q. You were still in the County, were you?

A. Not, in the County, no.

Q. How long ago was that?

A. I was away in a part of 1890, and 1900.

Q. And since that time you have lived here continuously in the County?

A. Yes, sir.

Q. Were you a member of the Citizens' League or Tax Payers league?

A. I have heard of it.

Q. Were you a member of it?

A. No, sir.

Q. You know Mr. John Hallahan, who was assessor in 1910?

A. Yes, sir, I know him.

Q. And John Hanson, who was a member of the board of County Commissioners at that time?

A. Yes, sir.

Q. Do you know Mr. Babcock who has been County Treasurer?

A. Yes, sir.

Q. Do you know Frank Lotzgesell, who was a member of the board of County Commissioners?

A. Yes, sir.

Q. And Mr. Erickson, who was also a member of the board of County Commissioners at that time?

A. I know him, but not a great deal of him. He was from the west end of the County.

Q. The four men whose names are mentioned as being County officers at that time are men who lived in this vicinity for a number of years?

A. Yes, sir.

Q. They are representative citizens and thoroughly well known?

A. I believe so.

Q. Do you know whether or not in 1890 or 1910, or at any time subsequently there has been any conspiracy on the part of the assessing or taxing officers of Clallam County to tax the timber owners or anybody else in this County so that they should bear a greater proportion of the taxes than other people?

A. No, sir, I don't know of that.

Q. You never heard of it?

A. No, sir.

Q. Do you think if there had been a conspiracy of that kind you would have learned of it?

A. I think so.

Q. Was there ever any conspiracy on the part of the people of the County generally to impose a greater burden of taxation on the timber owners, or anybody else in this County than they ought to bear.

A. I don't think there has been any conspiracy in that line, no.

Q. Do you know the present members of the board of County Commissioners?

A. Yes, sir.

Q. Do you know the County Treasurer?

A. Yes, sir.

Q. You knew them as they were constituted last August?

A. Yes, sir.

Q. Do you know of any conspiracy that there was on the part of those gentlemen to try to cheat the timber owners in this County by compelling them to pay a greater proportion of the taxes than they ought to bear?

A. I do not think there was any conspiracy at all; but my view of the matter of taxation of timber is a little variation. I do not think there was any conspiracy, but a difference in opinion in regard to the assessment of timber.

Q. What I want to know is this, Mr. Garlick, whether this difference of opinion that you have is an honest one?

A. Yes, sir, it is honest.

Q. State whether or not you believe that the opinions of the gentlemen were as honest as yours is?

A. I believe they were, certainly.

Q. Did you ever know of anything, or ever hear of anything to indicate that they were doing other than honestly attempting to fix the values of the property in the County?

A. No, sir.

RE-DIRECT EXAMINATION

BY MR. EARLE:

MR. EARLE: Mr. Edwards is not here. There are one or two questions I want to ask.

Q. Do you know whether there has been any

organized effort on the part of the tax payers association, or of the east end people generally to raise, or to influence the County officials to raise the assessments on timber?

A. I have not been a member of the taxpayers league, and I do not know that I can say, that I can answer that question, because I do not know of anything.

Q. Outside of the taxpayers league, do you know whether there has been an effort to influence the County officials to raise the assessment on timber?

A. Well, I think there has been an influence, but I do not believe there is anything dishonest about it. Naturally, people would advocate the raising of values on timber. Certainly you will always find that anywhere you go. It is a difference of opinion. Some think they should and others think differently.

Q. Has there been such an influence as that to advocate the raising of timber assessments here and in the east end of the County?

A. I could not say whether it had influence or not. People advocated raising the values on timber.

Q. There has been an effort?

A. I presume there has been an effort. I do not know whether it has been the officials, but people generally, a great many people advocated the raising of values on timber; whether it had any effect or not, I could not say.

Q. But you do know personally that there has been an effort?

A. I have talked with a great many people who have been in favor of raising the assessed valuation of timber through the County. They were very enthusiastic in regard to that; and others differed. Whether it has had any influence or not I could not state. They were not officials; just civilians.

RE-CROSS EXAMINATION

BY MR. RIDDELL:

Q. Mr. Garlick, as I understand it from your testimony, I want to get it right, is that there have been some people in the County who have felt that

the values on timber land should be raised, and there have been some people in the County who have felt that it ought not be?

A. Yes, sir.

Q. And the people who felt that it ought to be raised have said so, and the people who felt it ought not to be raised, have said so?

A. Yes, sir.

Q. And both people have been absolutely honestly in their convictions?

A. Yes, sir, I believe so.

(Witness excused.)

Charles F. Seal produced and sworn as a witness on behalf of plaintiff testified:

Q. Well, from your residence, and what you have known of the lands and what the lands produce, what the lands sell for, do you know, as you say, in a general way, what agricultural lands are worth on the Dungeness bottoms and around the Sequim prairie?

A. No; my testimony would not be of much consequence as to my ideas of value, because there is such a diversity of lands. It is in pockets and flats.

R. W. SCHUMACHER, produced as a witness on behalf of plaintiffs, having been first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified, as follows:

DIRECT EXAMINATION BY MR. EARLE

Q. What is your business?

A. Cashier of the State Bank of Sequim.

Q. How long have you lived in Sequim?

A. Five years.

Q. Have you been connected with the bank since the bank was organized?

A. Yes, sir.

Q. In the same position?

A. Yes, sir, in the same position.

Q. It is the duty of the bank, is it, to make annual statements of the financial condition of the bank?

A. Of course, we make daily statements for that matter. We make a statement every evening.

Q. Do you make a statement which you publish?

A. I publish a statement about five times a year as is called for by the examiner.

Q. And as cashier do you keep those statements?

A. Yes, sir.

Q. Have you them with you?

A. I have them with me.

Q. Will you read to the reporter the annual statement for each of the years, 1910, 1911, 1912, 1913, 1914, these statements issued by you, or advertised or published by you in the month of December in each of those years.

MR. RIDDELL: I object to that. In the first place that the statement itself is hearsay, and in the second place if the statements were not hearsay it would be the best evidence and not the witness's testimony as to what it contains.

Q. (Mr. Earle.) Have you the book there in which those statements are kept?

A. Yes, sir, I have every statement of every night that we have run since we started.

Q. Have you the original statements as I call for them for the month of December for each year?

A. If you want the statements as called for by the examiner; I haven't got it here, but I keep all of them at the bank. I can get everything called for, that has been called by the examiner. I haven't them with me. I have them here, but I would not know which ones to pick out.

MR. EARLE: It is our wish that you read into this deposition from the original statement, your statement for each of these periods; if you have them over to the bank we will have to ask you to bring them over and read from those.

A. All right, I won't need these at all.

Q. What are those statements? (Witness producing statements.)

A. This is a daily statement that I keep, copied off of the bank's records.

Q. And the only difference in these statements and the statements you have at the bank is that the others are the originals, or are these the originals?

A. Understand me, this is a statement of each year's business, but the State Bank examiner calls for any special date that he wishes, and then we have to swear to that statement and publish it, so the statements that the Bank examiner calls for sworn statements.

Q. And copied from this?

A. Copied from that.

Q. Then your book is a book of original entry from which these papers are copied?

A. Exactly.

Q. Very well, let's take it from the book.

A. I could not tell you the exact date they are called. They are called for special dates, and I could not tell you on this book. This is a copy of every night, whereas they are called about five times a year.

Q. I think we better have the ones you make to the bank examiner. (Witness retiring to get statements.)

(Witness producing statements.)

Q. Mr. Schumacher, what time of the year was that bank organized?

A. We were organized in March of 1910, we opened our doors the 5th of May, 1910.

Q. Then you might first read your financial statement in December of 1910.

A. Possibly there wasn't any call in that month.

Q. Take it from your book of original entry.

A. November 10 is the only call we had in that year.

Q. Take it from your book of original entry your financial statement for the last day of that year?

A. Yes, sir, I have that here, December 31st, 1910.

RESOURCES

Loans	\$18018.79
Over drafts	69.88
Warrant	7803.52

Premiums paid	15.61
Commercial State Bank	3249.11
Corn Exchange National Bank.....	1418.97
Cash	4637.99
Building, including real estate.....	2100.96
Furniture and Fixtures.....	1730.80
Expenses	1174.91
Interest paid	1622.70

\$40236.76

LIABILITIES

Undivided Profits	\$ 1266.69
Capital Stock	10000.00
Individual Deposits	21719.65
Demand Certificates	6122.60
Time Certificates	1127.82

\$40236.76

Q. Now, your statement as shown in your book of original entry for the 1st of March, 1911?

A. March 1st, 1911:

RESOURCES

Loans	\$18858.69
Over drafts	8.89
Warrants	10192.15
Premiums paid	15.61
Commercial State Bank.....	16920.36
Corn Exchange National Bank.....	1791.71
Cash	2966.19
Building, Furniture and Fixtures.....	3830.00
Expenses	334.06
Interest paid	33.98

\$54951.64

LIABILITIES

Capital Stock	\$10000.00
Undivided Profits	357.38
Individual deposits	38843.39
Time Certificates	5333.02
Demand Certificates	417.85

\$54951.64

Clallam Lumber Company
C. H. Ruddock and T. H. McCarthy

Q. Now give the statement for the last of the year of 1911?

A. December 30, 1911:

RESOURCES

Loans	\$28845.38
Warrants	1075.96
Banking House, Including Furniture and Fixtures	3980.00
Overdraft	11.85
Cash on hand.....	4186.61
National City Bank.....	3288.36
Corn Exchange National Bank.....	1623.09
Seaboard National Bank.....	3895.41
	\$56626.66

Expenses and interest were charged off on that date. There was none.

LIABILITIES

Capital Stock	\$10000.00
Undivided Profits	962.58
Individual Deposits	40066.49
Demand Certificates	1656.61
Time Certificates	3340.98
Certified Checks	600.00
	\$56626.66

Q. Coming now on the year 1912, the statement on the first of March, 1912?

A. March 1, 1912:

RESOURCES

Loans	\$27313.00
Warrants	12020.68
Banking House, Furniture and Fixtures.....	3980.00
Overdrafts	61.92
Cash on hand.....	2619.72
National City Bank.....	1561.05
Corn Exchange National Bank.....	227.69
Seaboard National Bank.....	131.50
Expenses	467.56
Interest paid	46.27
	\$48429.39

LIABILITIES

Capital Stock	\$10000.00
Surplus	850.00
Undivided Profits	456.86
Deposits	31630.65
Demand Certificates	1626.29
Time Certificates	3865.09
	<hr/>
	\$48429.39

Q. Now, at the close of 1912, what have you?

A. December 31, 1912:

RESOURCES

Loans	\$30140.00
Warrants	7172.85
Bonds	1570.25
Banking House, Furniture and Fixtures.....	4082.47
Overdraft	8.88
Real Estate Loans.....	5385.50
Cash	4776.30
National City Bank.....	16160.70
Corn Exchange National Bank.....	1361.75
	<hr/>
	\$70658.70

LIABILITIES

Capital Stock	\$10000.00
Surplus	1000.00
Undivided profits	1118.12
Deposits	51041.15
Demand Certificates	2531.16
Time Certificates	4933.59
Certified Checks	34.68
	<hr/>
	\$70658.70

Q. Now, give us March 1, 1913.

A. RESOURCES

Loans	\$36234.67
Warrants	7561.99
Bonds	1570.25
Banking House, Furniture and Fixtures.....	4050.00
Overdrafts	49.69
Real estate loans.....	4095.50

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Cash	1241.05
National City Bank.....	15152.65
Corn Exchange Bank.....	1049.90
Current Expenses	519.82
Interest paid	61.11
Short account30
	\$71586.93

LIABILITIES

Capital Stock	10000.00
Surplus	1125.00
Undivided Profits	638.43
Deposits	53835.65
Demand Certificates	1374.00
Time Certificates	4577.96
Certified Checks	34.68
Over account	1.21
	\$71586.93

Q. Now, give us December 31, 1913?

A. December 31, 1913:

RESOURCES

Loans and Discounts.....	51252.42
Warrants	2511.41
Bonds	8564.92
Banking House, Furniture and Fixtures.....	4025.00
Real Estate Loans.....	5225.00
Cash	3085.86
Merchants Bank	3432.92
National City Bank.....	8965.82
Corn Exchange National Bank.....	1121.44
Overdrafts	506.69
	\$88691.48

LIABILITIES

Capital Stock	10000.00
Surplus	1600.00
Undivided Profits	1136.82
Deposits ..	63655.76
Demand Certificates	3467.90
Time Certificates	8796.32

Certified Checks	34.68
	<hr/>
	\$88691.48

Q. Now, give us March 1, 1914.

A. March 1, 1914:

RESOURCES

Loans	52001.13
Warrants	3857.39
Bonds	8564.92
Banking House, Furniture and Fixtures.....	4012.50
Real Estate Loans.....	7325.00
Cash	1726.64
Merchants Bank	857.42
National City Bank.....	6768.24
Corn Exchange National Bank.....	766.22
Current Expenses	609.93
Interest	61.35
Overdrafts	312.97
Short accounts	3.15
	<hr/>
	\$86866.86

LIABILITIES

Capital Stock	10000.00
Surplus	2000.00
Undivided Profits	941.14
Deposits	64595.36
Demand Certificates	1717.04
Time Certificates	7578.64
Certified Checks	34.68
	<hr/>
	\$86866.86

Q. Give us December 31, 1914.

A. December 31, 1914:

RESOURCES

Loans	40687.50
Warrants	4009.05
Bonds	6300.00
Banking House, Furniture and Fixtures.....	3900.00
Real Estate Loans.....	5725.00
Cash on hand.....	5285.18
Merchants Bank	1077.43

Clallam Lumber Company
C. H. Ruddock and T. H. McCarthy

National City Bank.....	2560.67
Corn Exchange National Bank.....	1425.66
Port Angeles Trust & Savings Bank.....	1400.00
Overdrafts	47.11

\$72417.60

LIABILITIES

Capital Stock	10000.00
Surplus	2000.00
Undivided Profits	906.41
Deposits	48619.76
Demand Certificates	648.89
Time Certificates	9239.55
Savings Deposits	968.31
Certified Checks	34.68

\$72417.60

Q. Now, give in March 1, 1915?

A. RESOURCES

Loans	38157.81
Warrants	5296.05
Bonds	6300.00
Banking House, Furniture and Fixtures.....	3900.00
Real Estate Loans.....	6291.00
Cash	3775.32
Merchants Bank	1189.17
National City Bank.....	5935.10
Corn Exchange National Bank.....	1207.53
Port Angeles Trust & Savings Bank.....	1400.00
Current Expenses	532.81
Interest paid	73.28
Overdrafts	62.26

\$74120.33

LIABILITIES

Capital Stock	10000.00
Surplus	2000.00
Undivided Profits	1140.34
Deposits	50094.88
Demand Certificates	1483.07
Time Certificates	7659.98

Savings accounts	1625.22
Certified Checks	64.68
Over account	52.16
	<hr/>
	\$74120.33

Q. Mr. Schumacher, do you own the real estate where the Bank stands?

A. Yes, sir.

Q. What is the value of it?

MR. RIDDELL: I object to that until the witness's qualifications are shown.

A. At what valuation is that held by the bank as an asset?

MR. RIDDELL: I object to that as calling for a conclusion of the witness and a conclusion of the bank, and not being a true measure of the value of the property.

A. Well, it is carried on the books, including the bank building at twenty-one hundred dollars. That includes the building and the real estate. And the furniture and fixtures are listed at eighteen hundred dollars. I do not know how you can get at the value of the real estate without the building.

Q. Perhaps an explanation here is all that I want. Does this fourth item in your list of resources, banking house, furniture and fixtures, include the real estate on which the bank is located?

A. Yes, sir.

Q. That item is intended to cover your banking house and the lot that it is on?

A. Yes, sir; but, of course, the building is the chief value of the real estate.

Q. What rate of interest do you get here on an average of your loans?

MR. RIDDELL: I object to that as not within the issues in this case.

A. I think it will average about five per cent.

Q. And outside of the banking house do you own any other real estate?

A. Yes.

Q. Have you the description of it?

A. Not the legal description here; in section 29, I think it is, 160 acres, and in township 30, range 3. The legal description is the south half of the southwest quarter of section 3, the southeast quarter of the southeast quarter of section 4, the northwest quarter of the northwest quarter of section 10, township 29, range 4, west.

Q. Is that 160 carried on your bank books as a resource?

A. Yes, sir.

Q. At what valuation is that carried?

A. We are carrying it at twenty-two hundred dollars.

MR. RIDDELL: I object to that. My objection goes to all this that it is hearsay, and the witness is not qualified, and what the bank carries it on the books at is not a true measure of the value.

Q. I will ask you whether that is the valuation at which this property was taken over?

A. No, sir; that was the amount of our claim.

Q. I assume that it was taken over in payment of some indebtedness to the bank?

A. That is the amount of our claim, including the cost, interest and lawyers' fees.

Q. Was it taken over on an execution?

A. It was taken over on an execution.

(Witness excused.)

(Hearing adjourned to take further testimony at Port Angeles, June 17th, 1915.)

JAMES PETER CHRISTENSEN, produced as a witness on behalf of the plaintiffs, having been first duly sworn to testify to the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. EARLE:

Q. What is your full name?

A. James Peter Christensen.

Q. Your business.

A. Cashier of the Citizens National Bank.

Q. How long have you been cashier?

A. Ten years.

Q. How long has the bank been organized?

A. About twelve years.

Q. You have been cashier continuously for the last ten years?

A. Yes, sir, for the last ten years.

Q. As cashier of the bank is it your duty to keep the books of the bank, and among them a statement showing the financial condition of the bank from day to day?

A. Yes, sir.

Q. You have a book in which those original entries are made?

A. Yes, sir.

Q. Produce that? (Witness producing book.) Refer to your statement for the first of March, 1910.

A. As you know, you have my sworn statements, and this is identical with the books.

Q. You have the statement for 1910?

A. Yes, sir, for 1910, 1911, 1912, 1913, and 1914.

MR. EARLE: Will you stipulate that he may not read these statements, and they may be kept by Mr. Williams, the reporter, and that will constitute his testimony?

Q. (Mr. Riddell.) Mr. Christensen, you prepared them to let the stenographer have them?

A. Yes, sir.

Q. They are the statements of the financial condition of the bank on the dates mentioned therein?

A. Yes, sir.

Q. They are the ones from March 1, 1910, 1911, 1912, 1913 and 1914?

A. Yes, sir.

Q. Do those statements show the value of the real estate owned by the bank at the times purported therein?

A. Yes, sir. Permit me to say that the comptroller does not permit us to hold any real estate, but if it is necessary to foreclose and take a piece of real estate we can do that. At a few periods we have had one piece at a time, I do not think any

more, and for that reason, as you know, it at all times shows what real estate we had at that time; but the biggest portion of the time, we haven't had any real estate.

BY MR. EARLE:

Q. Now, take the first of March, 1914, did you hold any real estate at that time?

A. No, we did not, not at that time.

Q. What is your average rate of interest earned by the bank on its loans?

A. The average rate of interest earned by the bank on its loans to the best of my knowledge and belief, is about eight per cent.

Q. Would that hold true, too, of the bonds and warrants?

A. That they pay that much interest?

Q. Yes, sir.

A. No.

Q. What would be the average of them?

A. Those rates of interest are five, and the highest rates of interest on the warrants used to be eight per cent. It is a hard thing for me to average them, and in my best judgment it is not over six and a fraction.

Q. Would it average about six and a half?

A. Perhaps it would average about six and a half. We hold fifteen thousand dollars worth of Clallam County School warrants, and they only pay five per cent. If you permit me to refer to the books—

Q. The average rate is all we care about.

A. The average rate is about between six and six and a half.

Q. What dividend have you paid in 1914 for that year?

A. In 1914 we paid twenty per cent.

MR. EARLE: The attached statements marked exhibit "A", "B", "C", "D", "E" and "F" are offered in evidence.

(Exhibits above named admitted in evidence and made a part of the testimony of the witness.)

CROSS EXAMINATION

BY MR. RIDDELL:

Q. How long have you lived here?

A. I have lived here twenty-five years.

Q. Are you fairly well acquainted throughout the County?

A. Yes, sir.

Q. For a long time there were only two banks in Port Angeles, were there?

A. Yes, sir.

Q. This bank and the Bank of Clallam County?

A. Yes, sir.

Q. Did practically all the banking business that was done in the County?

A. Yes, sir.

Q. In that way you have become acquainted in a business way with practically all the responsible business men in the County?

A. Yes, sir.

Q. Were you familiar with the personnel of the County Commissioners and with the County Assessor, John Hallahan, and County Treasurer, C. L. Babcock, in the year 1910.

A. Yes, sir with Mr. Babcock and Mr. Hallahan in 1910.

Q. And at that time Mr. Lauridsen, who, I think, is president of this Bank, was also one of the County Commissioners, was he not?

A. Yes, sir, vice president.

Q. Do you know who the other County Commissioner was?

A. Hans Bugge.

Q. Now, Mr. Lauridsen was County Commissioner from Port Angeles at that time?

A. Yes, sir.

Q. And he was succeeded by John C. Hanson?

A. Yes, sir.

Q. And Mr. Hanson has since that time been the Commissioner from this district?

A. Yes, sir.

Q. John Hallahan continued to be County asses-

sor until just recently, at the last election he was succeeded by Mr. Prickett.

A. Yes, sir.

Q. And Mr. Babcock at the last election was succeeded by Stewart H. Woods?

A. Yes, sir.

Q. Do you remember who was the County Commissioner from the east end succeeding Hans Bugge?

A. It was Frank Lotzgesell.

Q. And after him?

A. After him goes Jim Dick.

Q. Who is the present County Commissioner from the east end?

A. Yes, sir.

Q. You are familiar with all of those gentlemen, are you?

A. Yes, sir.

Q. With them personally and their business reputations?

A. Yes, sir.

Q. And with their integrity?

A. Yes, sir.

Q. Mr. Christensen, do you know whether or not as a matter of fact there was ever a conspiracy on the part of those gentlemen, or any of them, either among themselves, or with anybody else, so to have the assessments, for the purpose of taxation made in Clallam County as to throw an undue burden of taxation on any particular set of individuals; was there any such conspiracy at any time?

MR. EARLE: I object to that as calling for a cross examination inasmuch as the witness's direct examination was not taken into that matter at all.

MR. RIDDELL: Yes; I will make him my own witness for that purpose.

MR. EARLE: All right.

A. Decidedly not.

Q. During the period from 1910 to the present date you have been actively engaged in business in Port Angeles?

A. Yes, sir.

Q. State whether or not you are familiar with the general trend of public opinion in this community and in the community as a whole?

A. Yes, sir, I am.

Q. State whether or not there is, or since 1910, ever has existed any public opinion favoring the imposition of an undue burden of taxation on any individual, or set of individuals in the County?

A. Absolutely not.

Q. State whether or not the charge that there has been a conspiracy on the part of the County officials whose names have been mentioned here, or on the part of any of them to enter into any sort of a conspiracy of that kind, is a libel on those men?

MR. EARLE: I object to that as not proper conclusion.

A. Yes, sir.

Q. Would a statement that there has been any such conspiracy on the part of any of those men be true?

A. No, sir.

Q. Have the people either in Port Angeles, or any other portion of the County that you know of ever been in favor of putting any undue burden of taxation on the timber men in the west end of the County?

A. Absolutely not.

Q. Has the bank, or has any officer, or depositor of your bank, ever made any representations to any of the taxing officers of Clallam County for the purpose, or looking to an assessment of your bank in such a way that you should escape a portion of the burden of taxation which you ought to bear?

A. None whatsoever.

MR. EARLE: I would like to ask one or two questions on cross examination.

CROSS EXAMINATION

BY MR. EARLE:

Q. I understood you to say on direct examination, Mr. Christensen, that there has never been a state of public opinion here demanding the imposition

of a greater burden of taxation on timber than should be, is that correct?

A. Your question is that there has never been any?

Q. Yes, sir, I understood you to say that?

A. Yes, sir; I testified that there has never been any.

Q. And never has been any public demands?

A. No.

Q. Don't you know that there has been a state of public opinion here in Port Angeles which most insistently demanded that this timber be subjected to a very high rate of assessment?

A. In brief I could say, "No, sir, None whatsoever." If you permit me to qualify—

Q. Certainly, make your answer as full as you please.

A. Several years ago there was a general public opinion that they did not get a proper taxation out of the timber, and due to having no cruise, and such things as that; that some of the timber men escaped taxes.

Q. Confining your remarks to the time that the cruise was begun; not earlier than 1910. That is the scope of time I intended to cover in my question?

A. No, sir, there has been none.

Q. Isn't it your own private opinion, Mr. Christensen, that timber is being assessed at a higher ratio of the true value than other classes of property in the County?

A. No, sir, it is not, from my knowledge and belief.

Q. What?

A. From the best of my knowledge and belief; I am not conversant with the timber holdings, and I have not had access to the books and so forth, but absolutely not.

Q. You mean to say that you are familiar with the values of the timber lands, personally familiar?

A. To some extent.

Q. And of the timber land with the value of

which you are familiar, would you say that the assessment was a fair assessment as compared for instance with the assessments on your bank here?

A. Yes, sir.

RE-DIRECT EXAMINATION

BY MR. RIDDELL:

Q. You began to tell the situation as it existed here in 1910, prior to 1910, and prior to the making of that cruise; do you know whether or not the timber men in the County had for years continuously been escaping their proper and just share of the burden of taxation in this County?

MR. EARLE: I object to that as going beyond the period not in issue in this case.

A. Yes, sir.

Q. They had been for years escaping a just share of the burden of taxation?

MR. EARLE: I object to that. What happened years ago we are not concerned now with that rate of assessment at issue in the litigation?

A. Yes, sir.

Q. Do you know the purpose of the cruise when it was made at that time?

A. The purpose was to get a just and fair adjustment of the tax payers of this County.

Q. Do you know whether or not in a general way that has been done?

A. Yes, sir.

Q. Mr. Christensen, you testified in answer to some questions of Mr. Earle's that you were not familiar in detail with each particular piece of property?

A. No, sir.

Q. But the general mass of the County, the general mass of the property in the County has been attempted to be assessed at a fair and just proportion of taxation?

A. Yes, sir.

RE-CROSS EXAMINATION

BY MR. EARLE:

Q. In stating that as compared with other property you considered the assessment as fair; did you

take into account the fact that timber land is a non-income bearing property?

A. I think so, yes, sir.

Q. Do you consider that property on which no income is being earned should be assessed at the same rate as property on which a larger rate of income is being earned, is that your idea of fairness?

A. I can explain it. Sooner or later, either the estate or the timber that is not income bearing now, in time, we expect that to bring returns.

Q. If it does not burn up in the meantime?

A. Yes, sir, that is true.

Q. Did you take into consideration, the large element of risk?

A. I did not of that; I did not take that into consideration.

Q. Now, reconsidering the matter in considering that timber as a non-income bearing property, and suspecting a rather high rate of fire risk, would you still say that you considered that timber property is being assessed at a fair rate as compared with other property in the County and income bearing property.

A. If you will permit me to say—I have personally been through those timber holdings in the west end of the County, and in my estimation there is a larger portion of that timber which is not exposed to a fire risk to any great extent. Personally I do not consider the fire risk as so great; but my statement, as far as the taxation goes is just qualified to that extent, you know. I did not take into consideration that fire risk, possibly an allowance ought to be made for that.

Q. In speaking of the risk in the west end, did you have in mind all the tremendous area of burned country between the west end of Lake Crescent and Beaver Creek?

A. Sol Duc Beaver Creek?

Q. Yes, sir.

A. Yes, sir; but when you go down to around Sapho, and big bodies of timber in there I do not think there is such a big fire risk. I would personally take the chances in buying timber and not consider that

risk very great; but as you say, there is a risk wherever timber is located along these ridges, that is true.

Q. With the fire risk in mind and the non-income bearing character of the property in mind, would you say that property is fairly assessed in your opinion?

A. I do.

(Witness excused.)

Indorsed: Depositions of witnesses taken on Stipulation by A. D. Williams, Notary Public, at Sequim and Port Angeles January 15, 1915. Filed August 30, 1915.

Thereupon plaintiffs rested, and the evidence was closed.

After the closing of the evidence in these causes and at the time of argument thereof the defendants asked leave of the Court to amend their answers filed in these causes, in order, as they contended, to make the allegations conform to the proofs. This was objected to by the plaintiffs upon the ground that the proposed amendments did not conform to the proofs, but were directly contrary to and inconsistent with the proofs and contrary to the issues made by the defendants and the theory upon which the cases were tried throughout by the defendants, and were unfair to the plaintiffs.

These objections were overruled by the Court, exceptions taken and allowed. The following discussion ensuing:

MR. PETERS: That puts an entirely different phase upon the whole case. It seems to me that is rather material.

THE COURT: They would be allowed to amend; whether you want to ask for a continuance and put in further proof or not, is different.

MR. PETERS: I can't put in that.

MR. EWING: The proof went in here upon a definite basis. It went in with no objection to it on the score that it was inconsistent with the pleadings. There has been no definite basis of fifty per cent, or anything else adopted.

THE COURT: You will be allowed to make the amendment.

The amendments proposed were thereafter embodied in amended answers filed herein on the 31st day of January, 1916. The pleadings, however, were treated and considered by the Court at the time of their submission as so amended. The more important amendments are as follows:

Defendants had plead as paragraph IX and X in the Ruddock & McCarthy cases, being numbers 37 and 57, and as paragraphs XIII and XIV in the Clallam Lumber Company cases, being numbers 36 and 56, as hereinbelow set out, and the amendments proposed and admitted to these allegations, were as set out in the way of interlineations and parts omitted in the way of brackets, below, to wit:

“XIII. With reference to paragraph XIII of said amended bill, the defendants ^{admit}_{deny} the practice by assessors and taxing boards of the custom therein referred to, and ^{admit}_{deny} the pursuit of such custom by county assessors and its recognition and acquiescence by the State Board of Equalization; deny that the assessor of Clallam County gives out and pretends that for the year 1913 he assessed taxable property within Clallam County upon the basis of fifty three per cent of its true and fair value in money, (or upon any other or different basis than that provided by the laws of the state of Washington at the time the assessments for the years 1912 and 1913 were made;) ^{admit}_{deny} that the members of the County Board of Equalization give out and pretend that they equalized and approved the assessments upon the taxable property within said county upon the basis alleged in said paragraph (or upon any other or different basis than that provided by the laws of the state of Washington at the time the assessments for the years 1912 and 1913 were made;) ^{admit}_{deny} that the interior timber lands in said county, including the lands owned by the plaintiff, were and are valued in the year 1913 for the purpose of taxation at sums in excess of fifty-three per cent of the true and fair value thereof in money;

(deny) that other properties in said county, real and personal, were valued at sums less than fifty three per cent of the true and fair value thereof in money; deny that the plaintiff was discriminated against grossly and intentionally or at all, by the assessing officers of Clallam County in the matter of assessment and taxation of its lands for the year 1913.

XIV. With reference to paragraph XIV of said amended bill, the defendants admit that the timber upon the lands of the plaintiff, as shown by the cruise made by the County of Clallam, amount in the aggregate to the figures set forth therein, approximately 2,551,000,600 ft. and that the assessments upon said lands for the year 1913 were made upon the basis of said cruise; deny that the timber upon the lands of the plaintiff was overvalued greatly or at all by the assessing officers of said county in the valuation put thereon by them for the purpose of taxation in the year 1913; admit that the valuations placed by the assessing officers of said county upon the lands of the plaintiff for the purpose of taxation for the year 1913 amount to the figures therein set forth, \$1,711,505; deny that the true and fair value in money of said lands does not exceed the sum of \$2,050,000 and did not exceed that sum in the year 1913; deny that said assessment for the year 1913 was made upon the basis of 83½ per cent (or upon any other or different basis than the true and fair value in money of all the property assessed;) (deny) that no property in said Clallam County, save the timber lands owned by the plaintiff and certain other timber lands similarly situated, was assessed in said year 1913 at so great a proportion of its true and fair value in money; deny that the assessment upon the lands of the plaintiff, or upon any other lands or other property in said county, was in pursuance of any combination and conspiracy between the assessor of Clallam County and the other members of the County Board of Equalization of said county as alleged in said paragraph or at all."

Plaintiffs excepted to each and all of the foregoing proposed amendments upon the grounds here-

inabove set out, and said objections were overruled, exceptions taken by the plaintiffs and allowed by the court.

In paragraph XXI of defendants' answer in the Clallam Lumber Company cases Nos. 36 and 56, corresponding to paragraph XVII in the Ruddock & McCarthy cases Nos. 37 and 57, the defendants had formerly plead as follows:

“Admit that upon the straits of Fuca and immediately adjoining tide water there lie fine bodies of fir, spruce, cedar and hemlock timber, which can readily be logged to the Straits as stated, and that extensive logging operations now are and for many years have been carried on in that portion of Clallam County.”

Their proposed amendment to this is as follows:

“Admit that upon the Straits of Fuca and immediately adjoining tide water there lie fine bodies of fir, spruce, cedar and hemlock timber, but deny that same can readily be logged to the Straits as stated, admit that extensive logging operations now are and for many years have been carried on in that portion of said Clallam County.

SANFORD C. ROSE,
Prosecuting Attorney,
DEVILLO LEWIS,
Deputy Prosecuting Attorney,
JOHN E. FROST,
EDWIN C. EWING,
JONES & RIDDELL,
Attorneys for Defendants.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
WASHINGTON, NORTHERN DIVISION
IN EQUITY—No. 36

CLALLAM LUMBER COMPANY, a Corporation,
Plaintiff,

vs.

CLALLAM COUNTY, a Municipal Corporation and
CLIFFORD L. BABCOCK, Treasurer,
Defendants.

IN EQUITY—No. 37

CHARLES H. RUDDOCK and TIMOTHY H.
McCARTHY,

Plaintiff,

vs.

CLALLAM COUNTY, a Municipal Corporation and
CLIFFORD L. BABCOCK, Treasurer,

Defendants.

IN EQUITY—No. 56

CLALLAM LUMBER COMPANY, a Corporation,
Plaintiffs,

vs.

CLALLAM COUNTY, a Municipal Corporation and
HERBERT H. WOOD, Treasurer,

Defendants.

IN EQUITY—No. 57

CHARLES H. RUDDOCK and TIMOTHY H.
McCARTHY,

Plaintiffs,

vs.

CLALLAM COUNTY, a Municipal Corporation and
HERBERT H. WOOD, Treasurer,

Defendants.

STATEMENT OF FACTS
CERTIFICATE OF JUDGE

I, the undersigned, hereby certify that the foregoing is a true, complete and properly prepared statement of all of the testimony introduced upon trial of the above entitled causes in the UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION, essential to the decision of the questions presented by the appeal of the said causes and of each of said causes herein petitioned for and allowed by said District Court, together with all evidence and objections made and taken to the admission and exclusion of evidence, and all motions and rulings thereupon made upon said trial, and that said statement

contains all material facts, matters and proceedings heretofore occurring in the trial of said causes and of each of said causes.

I further certify that the said causes were consolidated for trial and were tried together by consent of all of the parties, and upon the same evidence, testimony and record, and that the undersigned judge sat in the trial of the said causes by authority of the request of the judge at the time presiding in the above court.

And I further certify that said testimony, together with the original exhibits offered and admitted upon the trial of said causes, consisting of plaintiffs' exhibits lettered serially from A to Z, AA, BB, CC, DD, EE, FF, DD, HH and exhibits of defendants numbered serially 1 to 38, both inclusive, constitute all of the evidence introduced upon said trial essential to the decision of the questions presented by said appeal, and the same is hereby approved.

Such of said testimony as is reproduced in said statement in the exact words of the witness is so reproduced at the special instance and desire of the above named appellants and respondents, and the court hereby directs such reproduction.

Dated at Seattle, Washington, this 27th day of October, 1916.

EDWARD E. CUSHMAN,
United States District Judge of the United States District Court for the Western District of Washington, Northern Division, presiding at the trial of said cause in the Northern Division.

ENDORSED: Statement of Evidence, filed in U. S. District Court, Western District of Washington, Northern Division, the 27th day of October, 1916.

FRANK L. CROSBY, Clerk.

